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Wednesday
May 8, 1991

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6288 of May 6, 1991

Asian/Pacific American Heritage Month, 1991 and 1992

By the President of the United States of America

A Proclamation

With characteristic clarity and force, Walt Whitman wrote: "The United States themselves are essentially the greatest poem. . . . Here is not merely a nation but a teeming nation of nations." Those immortal words eloquently describe America's ethnic diversity—a diversity we celebrate with pride during Asian/Pacific American Heritage Month.

The Asian/Pacific American heritage is marked by its richness and depth. The world marvels at the wealth of ancient art and philosophy, the fine craftsmanship, and the colorful literature and folklore that have sprung from Asia and the Pacific islands. Whether they trace their roots to places like Cambodia, Vietnam, Korea, the Philippines, and the Marshall Islands or cherish their identities as natives of Hawaii and Guam, all Asian and Pacific Americans can take pride in this celebration of their heritage.

By preserving the time-honored customs and traditions of their ancestral homelands, Americans of Asian and Pacific descent have greatly enriched our Nation's culture. They have also made many outstanding contributions to American history. Indeed, this country's westward expansion and economic development were greatly influenced by thousands of Chinese and other Asians who immigrated during the 19th century. Today recent immigrants from South Asia are giving our Nation new appreciation for that region of the world.

Over the years—and often in the face of great obstacles—Asian and Pacific Americans have worked hard to reap the rewards of freedom and opportunity. Many have arrived in the United States after long and arduous journeys, escaping tyranny and oppression with little more than the clothes on their backs. Yet, believing in America's promise of liberty and justice for all and imbued with a strong sense of self-discipline, sacrifice, courage, and honor, they have steadily advanced, earning the respect and admiration of their fellow citizens. Today we give special and long-overdue recognition to the nisei who fought for our country in Europe during World War II. During one of America's darker hours, they affirmed the patriotism and loyalty of Japanese Americans and, in so doing, taught us an important lesson about tolerance and justice.

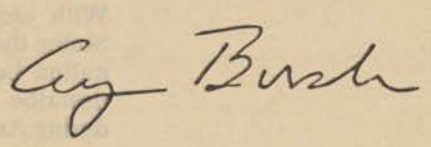
Time and again throughout our Nation's history, Asian and Pacific Americans have proved their devotion to the ideals of freedom and democratic government. Those ideals animate and guide our policies toward Asia and the Pacific today. The economic dynamism of the Pacific Rim is a crucial source of growth for the global economy, and the United States will continue working to promote economic cooperation and the expansion of free markets throughout the region. The United States also remains committed to the security of our allies and to the advancement of human rights throughout Asia and the Pacific.

The political and economic ties that exist between the United States and countries in Asia and the Pacific are fortified by strong bonds of kinship and culture. All Americans are enriched by those ties, and thus we proudly unite in observing Asian/Pacific American Heritage Month.

The Congress, by House Joint Resolution 173, has designated May 1991 and May 1992 as "Asian/Pacific American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of these occasions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the months of May 1991 and May 1992 as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe these occasions with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc 91-11136
Filed 5-6-91; 4:27 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service—Schedule A Authority for Employment of Students

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising the Schedule A excepted service appointing authority used by agencies to hire student assistants. These regulations permit agencies to make appointments under the authority at grades up to GS–9, or equivalent. Previously, the top grade limit was GS–7, or equivalent.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606–0960.

SUPPLEMENTARY INFORMATION: The Schedule A authority for positions filled by student assistants allows Federal agencies to use the services of students in work related to their majors and to afford the students practical experience to supplement their education. The authority requires that appointees be full-time students and does not provide for either full-time employment or continued employment after the student leaves school. Exception is based on OPM's finding that examinations geared toward career employment may not produce candidates interested in part-time temporary employment or may do so only at excessive cost. Currently, the authority permits employment at grades GS–7, or equivalent, and below for up to 1,040 hours in a service year. These limits represent a break-even point above which examining would be appropriate and cost-effective.

On December 7, 1990 (55 FR 50560), OPM published proposed regulations to raise the grade limit to GS–9. This change was suggested by an agency. In addition to the agency that made the original suggestion, three agencies and an employee organization supported the proposed regulations. One employee organization opposed expanding the Schedule A authority, stating that the agencies could fill these positions through job-sharing and part-time employment programs in the competitive service. However, those programs are geared toward continuing part-time work, not toward work that is both part-time and temporary.

OPM is, therefore, adopting the proposed regulations as final. Only the grade level limit is changed. The 1,040-hour service limit and the requirement for appointees to meet the experience and training requirements of the applicable qualifications standard are still in place.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 213 as follows:

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; section 213.101 also issued under 5 U.S.C. 2103; section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. In § 213.3102(q), the first sentence is revised to read as follows:

§ 213.3102 Entire Executive Civil Service

* * * * *

(q) Positions at grade GS–9, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. * * *

* * * * *

[FR Doc. 91–10903 Filed 5–7–91; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

Tobacco

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, with a minor correction, the proposed rule published in the **Federal Register** on February 21, 1991, (56 FR 6998). This rule amends the tobacco loan program regulations at 7 CFR part 1464 to: (1) Incorporate provisions implementing marketing assessments on the 1991 through 1995 crops of tobacco as set forth in the Omnibus Budget Reconciliation Act of 1990; (2) correct cross references to 7 CFR part 723 regulations published in the **Federal Register** on October 1, 1990; (3) delete obsolete material; and (4) make minor technical revisions. This final rule also amends 7 CFR part 1464 to incorporate an amendment which provides that a producer who is determined by the Agricultural Stabilization and Conservation Service (ASCS) to have erroneously represented any fact affecting a program determination shall not be entitled to price support with respect to which such representation was made, and shall refund to Commodity Credit Corporation (CCC) all payments received by the producer with respect to such farms and the tobacco program. This proposed amendment was erroneously published in the **Federal Register** on March 14, 1991, as a proposed revision to 7 CFR part 723.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Gary W. Wheeler, Tobacco Marketing Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC, 20013, telephone (202) 447–7562.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major."

It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases: 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The Omnibus Budget Reconciliation Act of 1990, enacted November 15, 1990, (Pub. L. 101–577), amended section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445), "the Act", to require, effective for each of the 1991 through 1995 crops of tobacco for which price support is made available under the Act, that both producers and purchasers of such tobacco shall each remit to the CCC a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop as otherwise provided for in the Act.

Annually, in accordance with the Act, the USDA determines and announces a national price support level for each kind of tobacco for which marketing quotas have not been disapproved by producers. For the 1991 through 1995 crops of such tobacco, both producers and purchasers of such tobacco will be required to remit to CCC an amount equivalent to .5 percent of the national price support level for such kind of tobacco on each pound of such tobacco marketed. Such remittance will be handled by CCC as a nonrefundable marketing assessment.

The CCC will determine and announce the marketing assessment for each of the 1991 through 1995 crops of the respective kinds of tobacco. The amount of the marketing assessment will be determined and rounded to the nearest hundredth of a cent. For example, if the national price support level for a kind of tobacco for the 1991 crop is $1.50 per pound, the marketing assessment due on each pound of tobacco marketed would be $.015 cents or $.0075 cent from both the producer and the purchaser.

The Act also provides for the collection and enforcement of the nonrefundable marketing assessment in a manner similar to the no-net-cost tobacco program assessments and contributions. The no-net-cost tobacco program assessments and contributions ensure, insofar as practicable, that the tobacco program operates at no-net-cost to the government.

The marketing assessment will be collected and remitted to CCC in accordance with 7 CFR 1464.10(i) which provides the procedures for collecting no-net-cost tobacco program assessments and contributions. For auction sales of tobacco, the marketing assessment will be collected through provisions in auction warehouse contracts between tobacco loan associations and auction warehouses. For non-auction sales of tobacco, dealers will be required to submit the marketing assessment collections on a weekly basis along with their weekly report of purchases.

A penalty for the failure to collect and remit any such marketing assessment will be determined in accordance with 7 CFR 1464.10(j) which provides the procedures for determining the penalty for failure to collect and remit no-net-cost tobacco contributions and assessments. Generally, any person who fails to collect and remit the nonrefundable marketing assessment in a timely manner would be liable for a marketing penalty at a rate equal to 75 percent of the average market price for the applicable kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. This marketing penalty would be in addition to any penalty imposed for failure to remit the no-net-cost tobacco program assessment or contribution.

In 7 CFR part 1464, all references to 7 CFR parts 724 through 726 are being changed to reference 7 CFR part 723. This action is necessary since USDA published a Final Rule in the **Federal Register** on October 1, 1990 (55 FR 39913), which removed 7 CFR parts 724, 725, and 726 and revised part 723 to include applicable portions of parts 724, 725, and 726.

Throughout 7 CFR part 1464 all references to "warehouseman" are being changed to "warehouse operator". This correction in terminology will be consistent with language contained in 7 CFR part 723.

All references in 7 CFR part 1464 to loans on farm-stored tobacco are being deleted since tobacco is no longer eligible for a farm-stored loan in accordance with 7 CFR part 1421.

No comments were received with respect to implementation of the tobacco marketing assessment published in the **Federal Register** on February 21, 1991 (56 FR 6998).

In a proposed rule to 7 CFR part 723, published in the **Federal Register** on March 14, 1991 (56 FR 10820), a new provision was added which provides that a producer who is determined by ASCS to have erroneously represented any fact affecting a program determination shall not be entitled to price support with respect to which such representation was made, and shall refund to CCC all payments received by the producer with respect to such farms and the tobacco program. This amendment was proposed since current regulations do not provide a scheme and device provision with respect to tobacco producers, warehouse operators, dealers, and other persons who intentionally act to defeat the purpose of the tobacco program regulations. This amendment provides for assessing penalties in such a manner as will correct and nullify any action in which a person or entity adopts any scheme or device to defeat the purpose of the tobacco regulations. No comments were received in response to this scheme and device provision being added to the tobacco program regulations. Both CCC and ASCS have determined that this scheme and device provision with respect to producers is more appropriately codified in 7 CFR part 1464 in lieu of 7 CFR part 723 since the monetary benefits which are affected by this action are issued pursuant to 7 CFR part 1464. This scheme and device provision with respect to warehouse operators, dealers, and other entities will remain at § 723.414(c) of this title.

List of Subjects in 7 CFR 1464

Tobacco; Tobacco loan program.

Final Rule

PART 1464—TOBACCO [AMENDED]

For the reasons set out in the preamble, title 7, chapter XIV, of the Code of Federal Regulations, is amended as follows:

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1308, 1441, 1445, 1445–1, 1421, and 1423; 15 U.S.C. 714b, 714c.

2. In part 1464 all references to "warehouseman" throughout part 1464 are revised to read "warehouse operator".

§ 1464.2 [Amended]

3. Section 1464.2 is amended in paragraph (b)(2)(i) by removing the words "Part 725" and adding, in its place, the words "Part 723"; in paragraph (b)(3) by deleting the second and third sentences; and in paragraph (b)(4) by deleting the second sentence.

§ 1464.4 [Amended]

4. Section 1464.4 is amended in paragraph (b) by removing the words "Parts 723 through 726" and adding, in their place, the words "Part 723", and by removing the words "his/her" and adding, in their place, the word "their", and paragraph (c) is removed.

§ 1464.5 [Amended]

5. Section 1464.5 is amended by removing the second sentence.

6. Section 1464.7 is amended by adding paragraphs (b)(3), (b)(4), and (b)(5) to read as follows:

§ 1464.7 Eligible producer.

* * * * *

(b) * * *

(3) Erroneously represented any fact affecting a tobacco program determination.

(4) Adopted any scheme or device which tends to defeat the purpose of the tobacco program.

(5) Made any fraudulent representations with respect to the tobacco program.

* * * * *

§ 1464.8 [Amended]

7. Section 1464.8 is amended in paragraph (d)(2) by removing the words "Parts 724 through 726" and adding, in their place, the words "Part 723".

8. Section 1464.9 is amended by adding paragraph (c) to read as follows:

§ 1464.9 Refund of price support advance.

* * * * *

(c) Misrepresented any fact affecting a tobacco program determination, adopted any scheme or device which tends to defeat the purpose of the tobacco program, or made any fraudulent representation which tends to defeat the purpose of the tobacco program. The refund of CCC price support advance shall apply to all payments on all farms received by such producer.

§ 1464.10 [Amended]

9. Section 1464.10 is amended in paragraph (i)(5)(i) by removing the word "Warehousemen" and adding, in its place, the words "Warehouse operators", in paragraph (i)(5)(ii) by removing the words "Parts 724 through 726" and adding, in their place, the words "Part 723", and paragraph (j)(2) is amended by removing the word "warehouseman's" and adding, in its place, the words "warehouse operator's".

§ 1464.12 [Redesignated from 1464.11]

10. Section 1464.11 is redesignated as § 1464.12.

11. Section 1464.11 is added to read as follows:

§ 1464.11 Nonrefundable marketing assessment.

Effective only for each of the 1991 through 1995 crops of tobacco for which price support is made available according to § 1464.2 of this part, both the producer and purchaser of such tobacco shall each remit to the CCC a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such kind and crop on each pound of tobacco marketed. The nonrefundable marketing assessment will be:

(a) Determined and announced by CCC at the time of announcing the national price support level for applicable kinds of tobacco or as soon thereafter as possible.

(b) Collected and remitted to CCC in accordance with § 1464.10(i) of this Part from producers and purchasers at the time of marketing.

(c) Collected by loan associations and remitted to CCC on all such tobacco pledged as loan collateral at the time such 1991 through 1995 crops of tobacco are sold from loan inventories.

(d) Subject to the same penalty for failure to be collected and remitted as provided for in § 1464.10(j) of this part.

(e) Enforceable in the courts of the United States by the Secretary.

Signed at Washington, DC on April 30, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–10665 Filed 5–7–91; 8:45 am]

BILLING CODE 3410–05–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

[Docket No. RM–91–1]

Rules Implementing the Freedom of Information Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Final rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is promulgating the following set of regulations to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. These regulations provide procedures for public access to Board records. The Board is undertaking this rulemaking in response to the decision of the United States Court of Appeals for the District of Columbia Circuit that the Board is an "agency" covered by FOIA. *Energy Research Foundation* v. *Defense Nuclear Facilities Safety Board (ERF* v. *DNFSB)*, 917 F. 2d 581 (1990).

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION:

I. Background

The Board is responsible for making recommendations to the Secretary of Energy and the President regarding health and safety issues at the nation's defense nuclear facilities. Since March of 1990 the Board has been voluntarily complying with the requirements of FOIA in the absence of implementing regulations. In *ERF* v. *DNSFB*, the D.C. Circuit held that the Board is an agency subject to the provisions of FOIA and generally covered by the Government in the Sunshine Act, 5 U.S.C. 552b. On March 8, 1991 (56 FR 9902) the Board published for comment its proposed regulations implementing FOIA. The Board received a single set of comments, which were filed jointly by the Energy Research Foundation and the Natural Resources Defense Council (ERF/NRDC). In addition, one of ERF/NRDC's comments filed with respect to the Board's proposed Sunshine Act regulations (since published as a final rule on March 7, 1991 (56 FR 9605)) related to FOIA and is treated in this notice. The Board has carefully considered the ERF/NRDC comments and has made some modifications to the proposed rule in response.

II. Board Consideration of Comments

Comment. The personal records exclusion from the proposed definition of "agency record" in § 1703.102 fails to take use of the record into consideration, as required under *Bureau of National Affairs* v. *U.S. Department of Justice*, 742 F. 2d 1484 (D.C. Cir. 1984) (BNA).

Response. The Board agrees that, in addition to the indicia of a personal record set forth in the proposed regulation, consideration must be given to whether, and to what extent, the author of the record used it to conduct agency business. *BNA; Kissinger* v. *Reporter's Committee for Freedom of the Press*, 445 U.S. 136 (1980). Section 1703.102 has been modified to note this additional factor to be considered in determining whether a document is a "personal" or an "agency" record.

Comment. ERF/NRDC assert that if it is the Board's intent that fee waivers not be applicable to the duplication costs of records made available in the Public Reading Room (PRR), such intent is "flatly inconsistent" with FOIA's fee waiver provision.

Response. The Board has made a distinction in § 1703.107 between records available for inspection and copying through the PRR and records not available in this manner. A "FOIA" request is not necessary for records available through the PRR, whereas it is necessary for other Board records. A member of the public seeking access to records that are available through the PRR simply has to reasonably describe the records sought (§ 1703.103(a)). The request does not have to be in writing, nor does the requesters have to state his willingness to pay fees or request a fee waiver or reduction (§ 1703.105(b)). As noted in § 1703.105(a), access to records through the PRR is intended to be a simplified process.

Consistent with this simplified procedure, the Board has provided that only duplication costs, and not search costs, will be passed on to requesters of PRR documents (§ 1703.107(a)). The Board has published for comment its Proposed FOIA Fee Schedule that establishes charges to requesters for various forms of document duplication based upon the Board's specific costs. 56 FR 11114 (March 15, 1991). For example, the cost for copying standard 8.5" by 11" paper would be five cents per page. ERF/NRDC are correct that, under this simplified procedure, the Board would not entertain waiver or reduction requests with respect to the duplication costs for PRR documents.

The distinction in the Board's proposed regulations between fee treatment of PRR records and other Board records is consistent with FOIA. 5 U.S.C. 552(a)(2) establishes a requirement that certain basic agency records shall be made easily available to the public for inspection and copying. 5 U.S.C. 552(a)(3) then states that requests for other agency records must be made in accordance with agency regulations, mentioning fees as one of the matters to be addressed in such a request. The Board reads 5 U.S.C. 552(a)(4), the FOIA section on fees, as implementing 5 U.S.C. 552(a)(3) and not 5 U.S.C. 552(a)(2). Documents in the PRR are in the "public domain" and are readily available to anyone who wants to review them. Section 1703.103(a) has been supplemented with a statement to this effect.

An agency satisfies FOIA when it has already made records available for inspection and copying in its public reading room and does not additionally have to provide those records directly to a requester in response to a FOIA request. *Tax Analysts* v. *Dep't of Justice*, 845 F.2d 1060, 1065, 1066–67 and n.15 (D.C. Cir. 1988), *aff'd* 109 S. Ct. 2841, 2851 n.12 (1989); *Oglesby* v. *Dep't of the Army*, 920 F. 2d 57, 70 (D.C. Cir. 1990); *Blakey* v. *Dep't of Justice*, 549 F. Supp. 362, 364–65 (D.D.C. 1982), *aff'd mem.*, 720 F. 2d 215 (D.C. Cir. 1983), cited in ERF/NRDC's comments.

This same reasoning has been applied in holding that the denial of a fee waiver is appropriate if requested information is already in the public domain, particularly in an agency's public reading room. *Blakey, supra.*[1]

The Board's treatment of fees for records available through the PRR is similar to the practices of other federal agencies. The Nuclear Regulatory Commission (NRC) distinguishes between duplication charges for records made available through its Public Document Rooms (PDRs) and other NRC records (10 CFR 9.35). The NRC has not made its provisions for fee waiver or reduction (10 CFR 9.41) applicable to duplication costs for PDR records.[2]

The Federal Energy Regulatory Commission (FERC) makes the same distinction. 18 CFR 388.106 provides for certain documents to be maintained in the Public Reference Room (PRR) and 18 CFR 388.109 distinguishes between (a) fees for records available through the PRR and (b) fees for other FERC records. 18 CFR 388.109(b)(6) states that fee reduction or waiver only applies to fees for other records.

As a final part of this comment, ERF/NRDC assert that if the Board does not have to apply fee waivers or reductions to documents made available through its PRR, it would be able to "shield" agency records from an applicable provision of FOIA. On the contrary, making documents available through the PRR is intended to speed and facilitate public access to Board records. The Board believes that the simplified process of access to Board records through the PRR will benefit members of the public.

Comment. The Board impermissibly proposes to include associated labor costs in charges for duplication of agency records by commercial contractors.

Response. This comment is based upon a statement by the Board in proposed § 1703.107(a)(1) that the Board will not charge for associated labor costs when *it* duplicates the agency records requested. ERF/NRDC assert that some requesters may be charged considerably more than others depending upon whether the Board finds it necessary to make use of a contractor to perform the duplication. This concern is laid to rest in the Board's proposed fee schedule. The Board currently expects to perform duplication of requested records by its own personnel. However, should it become necessary to use a commercial copying service, the Board does not expect the cost to be higher than the per-page rate to be

[1] ERF/NRDC suggest that in order for a document to be in the public domain, it must have been obtained by a member of the public and widely disseminated. ERF/NRDC imply that this is the position of the Department of Justice (DOJ) in its New FOIA Fee Waiver Policy Guidance (April 2, 1987). That guidance document does not address the question of whether availability through a public reading room places a document in the public domain. However, earlier DOJ guidance on the same subject expressly stated that availability of a document in an agency's public reading room constitutes placing that document in the public domain. Memorandum to Heads of All Federal Departments and Agencies from Jonathan C. Rose, Assistant Attorney General, Office of Legal Policy, Subject: Freedom of Information Act Fee Waivers (January 7, 1983, p. 3). *But compare Blakey, supra, with Fitzgibbon* v. *Agency for International Development, et. al.*, 724 F. Supp. 1048 (D.D.C. 1989), holding that under FOIA implementing regulations of the Departments of Justice and Defense, availability of certain documents in their public reading rooms did not establish that those documents were in the public domain and that a fee waiver request should, therefore, be denied.

[2] 10 CFR 9.41(a) provides that: "The NRC shall collect fees for searching for, reviewing, and duplicating agency records, . . . unless a requester submits a request in writing for a waiver or reduction of fees." In contrast, 10 CFR 9.35(a) prescribes the charges for duplication of PDR records by the contractor performing that service without provision for fee waiver or reduction.

charged when Board personnel perform the duplication. 56 FR 11114, n.2.[3]

Comment. Proposed § 1703.108(b) provides: "In the event of a request for a fee waiver or reduction, the period for action under this paragraph [*i.e.*, on the records request] begins to run from the date that the designated FOIA Officer grants the waiver or reduction request." ERF/NRDC assert that this provision would delay inappropriately the processing of FOIA requests that are accompanied by requests for fee waiver or reduction. They suggest that if persons seeking fee waiver or reduction also indicate a willingness to pay reasonable fees in the event the fee waiver or reduction is denied, the processing of the FOIA request should commence without awaiting a determination on the waiver/reduction request.

Response. The Board substantially adopts ERF/NRDC's suggestion and has modified §§ 1703.105(b)(4) and 1703.108(b) to reflect that a FOIA requester may avail itself of the option of stating a willingness to pay the fee anticipated to be incurred in processing its request, or to pay that fee not to exceed a certain amount, should its request for fee waiver or reduction be denied. In that event, the Board will commence processing of the records request without awaiting a determination by the Designated FOIA Officer on the waiver/reduction request. This modification makes proposed §§ 1703.105(b)(4) and 1703.108(b) consistent with the practices of other agencies. See, e.g., 10 CFR 1004.3(e) (DOE); 28 CFR 16.10(e) (DOJ).[4]

Comment. In their comments on the Board's proposed Government in the Sunshine regulations, ERF/NRDC requested modification of 10 CFR 1704.9 to state that the Board will only charge requesters for the actual cost of duplication of transcripts or recordings of closed meetings that are subsequently determined to be releasable. They further requested that the Board's regulations state that the fee waiver provisions of FOIA shall apply to requests for copies of such documents. The Board stated that it would address these comments in its promulgation of a final rule at FOIA. 56 FR 9605, at 9608 (March 7, 1991).

Response. The documents to which ERF/NRDC refer are recordings (the method that the Board intends to use) or transcripts of Board meetings that have been closed pursuant to 5 U.S.C. 552b(c)–(d) and which the Board subsequently determines may be released. 5 U.S.C. 552b(f)(2) requires the Board to make copies of such documents available to the public, except for such matters contained in the recordings or transcripts that may continue to be withheld under 5 U.S.C. 552b(c), and that copies of the documents be furnished to a requester at the actual cost of duplication or transcription. Consistent with this requirement and FOIA, the Board has proposed to charge $3.00 per cassette for audio cassette recordings of Board meetings. 56 FR 11114. This charge represents the actual cost to the Board for cassettes and is, therefore, responsive to part of ERF/NRDC's comment.

When the Board determines that such recordings may be publicly released, it will make them available through the PRR without the need for a request under § 1703.105. Section 1703.103 has been supplemented to reflect this intended practice. As noted above, the Board does not consider the fee waiver/reduction provisions of the FOIA to be applicable to documents made publicly available in this manner. If, however, a FOIA request is made for a recording that has not yet been placed in the PRR, the requester would be entitled to consideration for fee waiver or reduction even though the recording might subsequently be placed in the PRR.

List of Subjects in 10 CFR Part 1703

Freedom of information.

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is amended by adding a new part 1703 to read as follows:

PART 1703—PUBLIC INFORMATION AND REQUESTS

Sec.

Authority: 5 U.S.C. 552; Executive Order 12600, 3 CFR, 1987 Comp., p. 235; 42 U.S.C. 2286, 2286b(c).

§ 1703.101 Scope.

This part contains the Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552.

§ 1703.102 Definitions; words denoting number, gender and tense.

Agency record is a record in the possession and control of the Board that is associated with Board business. Agency records do not include records such as:

(1) Publicly available books, periodicals, or other publications that are owned or copyrighted by non-federal sources;

(2) Records solely in the possession and control of Board contractors;

(3) Personal records in the possession of Board personnel that have not been circulated, were not required by the Board to be created or retained, and may be retained or discarded at the author's sole discretion. In determining whether such records are agency records the Board shall consider whether, and to what extent, the records were used in agency business;

(4) Records of a personal nature that are not associated with any Board business; or

(5) Non-substantive information in the calendar or schedule books of the Chairman or Members, uncirculated except for typing or recording purposes.

Board means the Defense Nuclear Facilities Safety Board.

Chairman means the Chairman of the Board.

Designated FOIA Officer means the person designated by the Board to administer the Board's activities pursuant to the regulations in this part. The Designated FOIA Officer shall also be the Board officer having custody of or responsibility for agency records in the possession of the Board and shall be the Board officer responsible for authorizing or denying production of records upon requests filed pursuant to § 1703.105.

[3] OMB encourages the use of private sector services to locate, reproduce, and disseminate records in response to FOIA requests where the cost to the requester is no greater than it would be if the agency itself had performed the tasks. 52 FR 10018 (March 27, 1987). The charges of a commercial contractor are clearly going to include its labor costs.

[4] 28 CFR 16.10(e), providing that a FOIA request would not be deemed to have been received until the requester had agreed to pay the anticipated total fee (where the fee was estimated to be more than $25.00, the requester had been so advised, and fee waiver or reduction had not been requested), was upheld in *Irons* v. *FBI*, 571 F. Supp. 1241, at 1243 (D. Mass. 1983),.

General Counsel means the chief legal officer of the Board.

General Manager means the chief administrative officer of the Board.

Member means a Member of the Board.

In determining the meaning of any provision of this Part, unless the context indicates otherwise: the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

§ 1703.103 Requests for board records available through the public reading room.

(a) A Public Reading Room will be maintained at the Board's headquarters and will be open between 8:30 a.m. and 4:30 p.m. Mondays through Fridays, with the exception of legal holidays. Documents may be obtained in person or by written or telephonic request from the Public Reading Room by reasonably describing the records sought. The purpose of the Public Reading Room is to provide easy accessibility to a substantial portion of the Board's records. The Board considers that documents available through the Public Reading Room have been placed in the public domain.

(b) The public records of the Board that are available for inspection and copying upon request in the Public Reading Room include:

(1) The Board's rules and regulations;

(2) Statements of policy adopted by the Board.

(3) Board recommendations; the Secretary of Energy's response, any final decision, and implementation plans regarding Board recommendations; and interested person's comments, data, views, or arguments to the Board concerning its recommendations and the Secretary of Energy's response and final decision;

(4) Transcripts of public hearings and any Board correspondence related thereto;

(5) Recordings or transcripts of Board meetings that were closed under 10 CFR part 1704, where the Board subsequently determines under 10 CFR 1704.9 that the recordings or transcripts may be made publicly available;

(6) Board orders, decisions, notices, and other actions in a public hearing;

(7) Board correspondence, except that which is exempt from mandatory public disclosure under § 1703.104;

(8) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Board is a party and the correspondence with the courts or clerks of court;

(9) Those of the Board's Administrative Directives that affect members of the public;

(10) Index of the documents identified in this section, but not including drafts thereof; and

(11) Annual reports to Congress in which the Board's operations during a past fiscal year are described.

§ 1703.104 Board records exempt from public disclosure.

The following records are exempt from public disclosure:

(a)(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(2) Which are in fact properly classified pursuant to such Executive Order;

(b) Records related solely to the internal personnel rules and practices of an agency;

(c) Records specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Interagency or intraagency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Board;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records of information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

§ 1703.105 Requests for board records not available through the public reading room (FOIA Requests).

(a) Upon the request of any person, the Board shall make available for public inspection and copying any reasonably described agency record in the possession and control of the Board, but not available through the Public Reading Room, subject to the provisions of this part. If a member of the public files a request with the Board under the FOIA for records that the Board determines are available through the Public Reading Room, the Board will treat the request under the simplified procedures of § 1703.103.

(b)(1) A person may request access to Board records that are not available through the Public Reading Room by using the following procedures:

(i) The request must be in writing and must describe the records requested to enable Board personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any Board personnel who have been contacted regarding the request prior to the submission of the written request.

(ii) A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described. The request must enable the Board to identify and locate the records by a process that is not unreasonably burdensome or disruptive of Board operations.

(2) The request should be addressed to the Designated FOIA Officer and clearly marked "Freedom of Information Act Request." The address for such requests is: Designated FOIA Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. For purposes of calculating the time for response to the request under § 1703.108, the request

shall not be deemed to have been received until it is in the possession of the Designated FOIA Officer or his designee.

(3) The request must include:

(i) A statement by the requester of a willingness to pay the fee applicable under § 1703.107(b), or to pay that fee not to exceed a specific amount, or

(ii) A request for waiver or reduction of fees.

(4) No request shall be deemed to have been received until the Board has:

(i) Received a statement of willingness to pay, as indicated in § 1703.105(b)(3)(i), or

(ii) Received and approved a request for waiver or reduction of fees. However, the FOIA request shall be deemed to have been received if the request for waiver or reduction of fees includes a statement of willingness to pay the fee anticipated to be incurred in processing the request under this section, or to pay that fee not to exceed a specific amount, should the request for fee waiver or reduction be denied.

(c) with respect to records in the files of the Board that have been obtained from other federal agencies:

(1) Where the record originated in another federal agency, the Designated FOIA Officer shall refer the request to that agency and so inform the requester, unless the originating agency agrees to direct release by the Board.

(2) Requests for Board records containing information received from another agency, or records prepared jointly by the Board and other agencies, shall be treated as requests for Board records. The Designated FOIA Officer shall, however, coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency Denying Official as well as the Designated FOIA Officer if a denial by the Board is also involved.

(d) If a request does not reasonably describe the records sought, as provided in paragraph (b) of this section, the Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Board personnel in an attempt to restate the request. If additional information is needed from the requester to render records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purposes of calculating the time for response under § 1703.108.

§ 1703.106 Requests for waiver or reduction of fees.

(a) The Board shall collect fees for record requests made under § 1703.105, as provided in § 1703.107(b), unless a requester submits a request in writing for a waiver or reduction of fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into his possession. No determination shall be made that a fee waiver or reduction request should be denied, until the Designated FOIA Officer has consulted with the General Counsel's Office. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth his appeal rights under § 1703.109.

(b) A person requesting the board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 1703.105, it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the Board shall consider the following factors:

(1) Whether the subject of the requested agency records concerns the operations or activities of the Government;

(2) Whether disclosure of the information is likely to contribute significantly to public understanding of Government operations or activities;

(3) Whether, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and

(4) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 1703.107 Fees for record requests.

(a) Fees for records available through the Public Reading Room.

(1) With the exception of copies of transcripts of Board public hearings addressed in paragraph (a)(2) of this section, the fees charged shall be limited to costs of duplication of the requested records. The Board shall either duplicate the requested records or have them duplicated by a commercial contractor. If the Board duplicates the records, it shall not charge the requester for the associated labor costs. A schedule of fees for this duplication service shall be prescribed in accordance with paragraph (b)(6) of this section. A person may obtain a copy of the schedule of fees in person or by mail from the Public Reading Room. There shall be no charge for responses consisting of ten or fewer pages.

(2) Transcripts of Board public hearings are made by private contractors. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the duplication service noted in paragraph (a) of this section, if the particular contract so permits. Copies of the contracts shall be available for public inspection in the Public Reading Room.

(3) Requests for certification of copies of official Board records must be accompanied by a fee of $5.00 per document. Inquiries and orders may be made to the Public Reading Room in person or by mail.

(b) Fees for records not available through the Public Reading Room (FOIA requests).

(1) *Definitions.* For the purpose of paragraph (b) of this section:

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA;

Direct costs means those expenditures which the Board incurs in search, review and duplication, as applicable to different categories of requesters, to respond to requests under § 1703.105. Direct costs include, for example, the average hourly salary and projected benefits costs of Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Board records are stored.

Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research;

Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry;

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media may be included in this category. A "freelance" journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time and for document review time, and the costs of duplication as established in the schedule of fees referenced in paragraph (b)(6) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Board's charges shall be limited to the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(6) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (b)(2) (i) or (ii) of this section the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time, and the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(6) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If documents are mailed, requesters shall be charged fees based on the current postage or express delivery service rates.

(v) The Board, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Board for a FOIA request would be less than the appropriate threshold, the Board shall not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the Board may aggregate any such requests and charge the requester accordingly. The Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(viii) Whenever the Board estimates that duplication or search costs are likely to exceed $25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Board personnel with the object of reformulating the request to meet the requester's needs at a lower cost.

(3) *Fees for unsuccessful search.* The Board may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure.

(4) *Advance payments.* (i) If the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, the Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(ii) If a requester has previously failed to pay a fee charged in a timely fashion, the Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Board will begin to process a new request or a pending request from that requester.

(iii) When the Board requires advance payment under this paragraph, the administrative time limits prescribed in § 1703.108(b) will begin only after the Board has received the fee payments.

(5) *Debt collection.* The Board itself may endeavor to collect unpaid FOIA fees, or may refer unpaid FOIA invoices to the General Services Administration, or other federal agency performing financial management services for the Board, for collection.

(6) *Annual adjustment of fees.*—(i) *Update and publication.* The Board, by its designee, the General Manager, shall promulgate a schedule of fees and the average hourly pay rates and average hourly projected benefits cost and will update that schedule once every twelve months. The General Manager shall publish the schedule for public comment in the **Federal Register.**

(ii) *Payment of updated fees.* The fee applicable to a particular FOIA request

will be the fee in effect on the date that the request is received.

§ 1703.108 Processing of FOIA requests

(a) Where a request complies with § 1703.105 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

(1) Granting the request,

(2) Denying the request,

(3) Granting or denying it in part,

(4) Stating that the request has been referred to another agency under § 1703.105, or

(5) Informing the requester that responsive records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested records shall be taken within ten working days of receipt of a request for Board records, as defined in § 1703.105, except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Designated FOIA Officer of the reasons for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed ten working days. In the event of a request for fee waiver or reduction, unless the requester has stated a willingness to pay the fee anticipated to be incurred in processing its request under § 1703.105, or to pay that fee not to exceed a specific amount, should his request for fee waiver or reduction be denied, the period for action under this paragraph shall begin to run from the date that the Designated FOIA Officer grants the waiver or reduction request.

(c) For purposes of this section and § 1703.109, the term "unusual circumstances" may include but is not limited to the following:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Board's Washington, DC offices;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which may be responsive to a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency pursuant to § 1703.105(d).

(d) If no determination has been made at the end of the ten day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the Board will nevertheless continue to process the request. If the Board is unable to provide a response within the statutory period, the Designated FOIA Officer shall inform the requester of the reason for the delay; the date on which a determination may be expected to be made; and that the requester can seek remedy through the courts, but shall ask the requester to forgo such action until a determination is made.

(e) Nothing in this part shall preclude the Designated FOIA Officer and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon.

(f) The procedure for appeal of denial of a request for Board records is set forth in § 1703.109.

§ 1703.109 Procedure for appeal of denial of requests for board records and denial of requests for fee waiver or reduction.

(a)(1) A person whose request for access to records or request for fee waiver or reduction is denied in whole or in part may appeal that determination to the General Counsel within 30 days of the determination. Appeals filed pursuant to this section must be in writing, directed to the General Counsel at the address indicated in § 1703.105(b)(2) and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Board not addressed and marked as indicated in this paragraph will be so addressed and marked by Board personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records or fee reduction is in whole or in part upheld, the General Counsel shall notify the person making such request of the provisions for judicial review of that determination.

(b) In unusual circumstances, as defined in § 1703.108(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to ten working days, by the General Counsel, who will send written notice to the requester setting forth the reasons for such extension and the expected determination date.

§ 1703.110 Requests for classified records.

The Board may at any time be in possession of classified records and Unclassified Controlled Nuclear Information (UCNI) received from the Department of Energy or other federal agencies. The Board shall refer requests under § 1703.105 for such records or information to the Department of Energy or other originating agency without making an independent determination as to the releasability of such documents. The Board shall refer requests for classified records in a manner consistent with Executive Order 12356, "National Security Information," 3 CFR, 1982 Comp., p. 166, or any superseding Executive Order. The Board shall refer requests for UCNI in a manner consistent with 42 U.S.C. 2168 and the Department of Energy's implementing regulations in 10 CFR part 1017 or any successor regulations.

§ 1703.111 Requests for privileged treatment of documents submitted to the board.

(a) *Scope.* Any person submitting a document to the Board may request privileged treatment by claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of FOIA and should otherwise be withheld from public disclosure.

(b) *Procedures.* A person claiming that information is privileged under paragraph (a) of this section must file:

(1) An application, accompanied by an affidavit, requesting privileged treatment for some or all of the information in a document, and stating the justification for nondisclosure of the information and addressing the factors set forth in paragraph (e) of this section;

(2) The original document, boldly indicating on the front page "Contains Privileged Information—Do Not Release" and identifying within the document the information for which the privileged treatment is sought;

(3) Three copies of the redacted document (*i.e.*, without the information for which privileged treatment is sought) and with a statement indicating that information has been removed for privileged treatment; and

(4) The name, title, address, telephone number, and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Board.

(c) *Effect of privilege claim.* (1) The Designated FOIA Officer shall place documents for which privileged treatment is sought in accordance with paragraph (b) of this section in a nonpublic file, while the request for confidential treatment is pending. By placing documents in a nonpublic file, the Board is not making a determination on any claim for privilege. The Board retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its responsibilities.

(2) The Designated FOIA Officer shall place the request for privileged treatment described in paragraph (b)(1) of this section and a copy of the redacted document described in paragraph (b)(3) of this section in a public file while the request for privileged treatment is pending.

(d) *Notification of request and opportunity to comment.* When a FOIA requester seeks a document for which privilege is claimed, the Designated FOIA Officer shall so notify the person who submitted the document and give that person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice shall be sent to the FOIA requester.

(e) *Factors to be considered by Board.* In determining whether to grant the document privileged status and to deny the request for the document the Board shall consider:

(1) Whether the information has been held in confidence by its owner;

(2) Whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor;

(3) Whether the information was transmitted to and received by the Board in confidence;

(4) Whether the information is available in public sources; and

(5) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(f) *Notification before release.* Notice of a decision by the Designated FOIA Officer to deny a claim of privilege, in whole or in part, shall be given to any person claiming that information is privileged no less than five days before public disclosure. The decision shall be made only after consultation with the General Counsel's Office. The notice shall briefly explain why the person's objections to disclosure were not sustained. A copy of this notice shall be sent to the FOIA requester.

(g) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of confidential commercial information, the Board shall notify the person who submitted documents containing such confidential commercial information of the suit.

§ 1703.112 Computation of time.

In computing any period of time under this Part, the day of the Board's action is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next working day. Whenever a person has the right or is required to take some action within a prescribed period after notification by the Board and the notification is made by mail, five days shall be added to the prescribed period. Only two days shall be added when a notification is made by express mail.

Dated: May 1, 1991.

John T. Conway,

Chairman.

[FR Doc. 91-10851 Filed 5-7-91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-256-AD; Amdt. 39-6990]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 and MD-88 series airplanes, which requires inspections and modification of the electrical connectors containing sidewall fluorescent lighting wires to preclude overheating the connectors and damaging the associated wiring located above the forward cabin ceiling panel. This amendment is prompted by two reports of smoke emanating from the passenger forward cabin ceiling area. This condition, if not corrected, could result in damage to the associated systems wires and possible in-flight fire in the passenger forward cabin ceiling area.

EFFECTIVE DATE: June 11, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk Baker, Aerospace Engineer, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5345.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 airplanes, which requires inspections and modification of the electrical connectors containing sidewall fluorescent lighting wires to preclude overheating the connectors and damaging the associated wiring located above the forward cabin ceiling panel, was published in the **Federal Register** on December 14, 1990 (55 FR 51427).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One operator stated that a longer compliance time was justified since it had not experienced fires due to overheated connectors in the wiring above the forward cabin ceiling panel on any of its aircraft. Further, this commenter stated that a lead time of 16 to 18 weeks is required for availability of this specific connector. Another commenter asserted that the requirement to modify the airplane, prior to further flight, would impose an undue burden on its fleet, which comprises 46 percent of the Model DC-9-80 airplanes on the U.S. registry. The FAA does not concur. Data from the manufacturer indicate that the required parts will be available to modify the fleet within the proposed compliance time. Furthermore, due to the severe consequences of an in-flight fire in the passenger forward cabin ceiling area, the FAA has determined that the 90-day compliance time is appropriate.

One commenter requested that the repetitive inspection interval be changed from the proposed 6 months to 1,800 hours time-in-service in order to align the follow-on inspections with aircraft utilization time and not calendar days. The FAA disagrees. Inspection intervals based on hours time-in-service would not provide an equivalent level of safety for those operators with low usage of their aircraft.

Several commenters requested that the proposed compliance time of "prior to further flight," for accomplishing the terminating modification, be delayed after findings of damage. One commenter stated that performing the modification, which requires 5.2 manhours for accomplishment, is unreasonable. One operator requested a 5-day extension to the proposed compliance time to allow scheduling flexibility to perform the modification at a base of operation where manpower and facilities are available with minimal impact on operations. Another commenter suggested that a temporary fix be developed until such time that the terminating modification can be accomplished. The FAA does not concur. The FAA has determined that the compliance time, as proposed, represents the maximum time allowable for affected airplanes to continue to operate prior to modification without compromising safety. Furthermore, based upon the catastrophic consequences of an in-flight fire in the passenger forward cabin ceiling areas, the FAA has determined that, after findings of damage, modification is necessary prior to further flight.

Paragraph C. of the final rule has been revised to reflect the current method of obtaining approvals for alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 845 McDonnell Douglas Model DC-9-81, -82, -83, and -87 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 495 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Parts are estimated to cost $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $225,225.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, and -87 series airplanes, and MD-88 airplanes, fuselage Numbers 909 through 1825 certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate a potential fire ignition source in the forward cabin ceiling panel area, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the electrical connectors located above the forward cabin ceiling panel for damage in accordance with Paragraph B. of the "Accomplishment Instructions" of McDonnell Douglas Alert Service Bulletin A33-92, dated October 22, 1990 (hereinafter referred to as "The Service Bulletin").

1. If damage is found, prior to further flight, modify the connectors and wires in accordance with Paragraph B, Condition I, of the "Accomplishment Instructions" in the Service Bulletin.

2. If no damage is found, reinstall the connectors and reinspect the connectors in accordance with paragraph A. of this AD at intervals not to exceed 6 months.

B. Within 2 years after the effective date of this AD, modify the connectors in accordance with Paragraph B, Condition I or Condition II, Option 2, of the Service Bulletin. Accomplishment of these modifications constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard Long Beach, California 90846; ATTN: Business Unit Manager, Technical Publications C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective June 11, 1991.

Issued in Renton, Washington, on April 26, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10882 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-02-AD; Amdt. 39-6991]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes, Manufacturer's Fuselage Numbers 1 Through 379

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 series airplanes, which requires inspection and replacement of the cargo door latch spool fitting attach bolts. This amendment is prompted by a report of broken latch spool fitting attach bolts found on a Model DC-9 series freighter airplane. This condition, if not corrected, could result in inadvertent opening of a cargo door in flight, and subsequently lead to loss of pressurization and reduced controllability of the airplane.

EFFECTIVE DATE: June 11, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda D. Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

SUPPLEMENTARY INFORMATION: .

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-10 series airplanes, which requires inspection and replacement of the cargo door latch spool fitting attach bolts, was published in the Federal Register on January 28, 1991 (56 FR 3059).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters agreed with the rule as proposed.

Paragraph F. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 379 McDonnell Douglas Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 190 airplanes of U.S. registry will be affected by this AD, that it will take approximately 86 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts required for terminating action is estimated to be $10,682 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,926,280.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation of part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to all McDonnell Douglas Model DC-10 series airplanes, manufacturer's fuselage numbers 1 through 379, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of a cargo door in flight, a condition which could result in loss of pressurization and reduced controllability of the aircraft, accomplish the following:

A. Within 16 months after performing the torque test required by AD 90-19-12, Amendment 39-6735, perform magnetic particle inspections on the H-11 cargo door latch spool fitting attach bolts or replace the H-11 cargo door latch spool fitting attach bolts with new bolts and associated hardware, in accordance with the Accomplishment Instructions for Phase 2 of McDonnell Douglas DC-10 Alert Service Bulletin A52-212, Revision 1, dated September 14, 1990 (hereafter referred to as the "Service Bulletin").

1. If a bolt does not pass the magnetic particle inspection, prior to further flight, replace it with a new bolt and seal in accordance with Figure 1 of the Service Bulletin.

2. If a bolt passes the magnetic particle inspection, prior to further flight, reinstall the bolt and seal in accordance with the Service Bulletin.

B. Within 16 months after accomplishment of the inspections required by paragraph A. of this AD, and at intervals not to exceed sixteen months, replace the H-11 cargo door latch spool fitting attach bolts with new bolts and associated hardware or perform either a magnetic particle or ultrasonic inspection on the H-11 cargo door latch spool fitting attach bolts in accordance with the Accomplishment Instructions for Phase 2 of the Service Bulletin.

1. If a bolt does not pass the magnetic particle/ultrasonic inspection, prior to further flight, replace it with a new bolt and seal in accordance with Figure 1 of the Service Bulletin.

2. If a bolt passes the magnetic particle/ultrasonic inspection, prior to further flight, reinstall the bolt and seal in accordance with the Service Bulletin.

C. The inspections required by paragraphs A. and B. of this AD are not required for Inconel bolts, parts numbers RA21026–7, 77711–7, and 3D0031–7.

D. Within five years after the effective date of this AD, replace all H–11 cargo door latch spool fitting attach bolts with Inconel bolts, part numbers RA21026–7, 77711–7, and 3D0031–7 (grip lengths as applicable per location as specified in Figure 1 sheets 3 and 4 of the Service Bulletin) in accordance with the Accomplishment Instructions for Phase 3 of the Service Bulletin. Installation of Inconel bolts constitutes terminating action for the requirements of paragraphs A. and B. of this AD.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of the requirements of this AD.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies of upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Management, Technical Publications, C1–HDR (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective June 11, 1991.

Issued in Renton, Washington, on April 26, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–10883 Filed 5–7–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26539; Amdt. No. 1451]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. *It, therefore*—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on April 26, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective July 25, 1991*

Andalusia/Opp, AL—Andalusia-Opp, NDB-A, Amdt. 2
Bessemer, AL—Bessemer, VOR RWY 5, Amdt. 5
Bessemer, AL—Bessemer, NDB RWY 5, Amdt. 3
Butler, AL—Butler-Choctaw County, NDB RWY 11, Amdt. 2
Decatur, AL—Pryor Field, VOR RWY 18, Amdt. 10
Decatur, AL—Pryor Field, VOR RWY 36, Amdt. 3
Montgomery, AL—Dannelly Field, RADAR-1, Amdt. 8
Truckee, CA—Truckee-Tahoe, RNAV-B, Amdt. 1, CANCELLED
Falmouth, KY—Gene Snyder, VOR-A, Amdt. 2
Danville, KY—Goodall Field, NDB-A, Amdt. 4
Homer, LA—Homer Muni, NDB RWY 12, Amdt. 1
Houma, LA—Houma-Terrebonne, VOR RWY 12, Amdt. 3
Houma, LA—Houma-Terrebonne, VOR/DME RWY 30, Amdt. 10
Houma, LA—Houma-Terrebonne, NDB RWY 18, Amdt. 3
Houma, LA—Houma-Terrebonne, ILS RWY 18, Amdt. 2
Houma, LA—Houma-Terrebonne, VOR/DME RNAV RWY 36, Amdt. 3
Houma, LA—Houma-Terrebonne, Copter VOR/DME 117, Amdt. 2
Mansfield, LA—De Soto Parish, NDB RWY 18, Amdt. 1
Morristown, TN—Moore-Murrell, SDF RWY 5, Amdt. 3
Morristown, TN—Moore-Murrell, NDB RWY 5, Amdt. 3
Alpine, TX—Alpine Muni, NDB RWY 19, Amdt. 3
Big Lake, TX—Reagan County, NDB RWY 16, Amdt. 1
Bowie, TX—Bowie Muni, NDB RWY 17, Amdt. 2
Bowie, TX—Bowie Muni, NDB RWY 35, Amdt. 2
Georgetown, TX—Georgetown Muni, NDB RWY 18, Amdt. 4
Odessa, TX—Odessa-Schlemeyer Field, VOR-A, Amdt. 5
Odessa, TX—Odessa-Schlemeyer Field, NDB RWY 20, Amdt. 3

** * * Effective June 27, 1991*

Chico, CA—Chico Muni, VOR RWY 13L, Amdt. 8
Cordele, GA—Crisp County-Cordele, VOR/DME RWY 22, Amdt. 9
Cordele, GA—Crisp County-Cordele, NDB RWY 9, Amdt. 3
Monroe, GA—Monroe-Walton County, NDB RWY 3, Amdt. 3
Sandersville, GA—Kaolin Field, VOR/DME-A, Amdt. 4
Sandersville, GA—Kaolin Field, NDB RWY 12, Amdt. 3
Louisville, KY—Bowman Field, NDB RWY 32, Amdt. 12
Madison, MS—Bruce Campbell Field, NDB RWY 17, Amdt. 2 CANCELLED
Raleigh/Durham, NC—Raleigh-Durham International, ILS RWY 5L, Amdt. 2
Raleigh/Durham, NC—Raleigh-Durham International, ILS RWY 23R, Amdt. 7
Oxford, OH—Miami University, NDB RWY 4, Amdt. 9
Oxford, OH—Miami University, RNAV RWY 4, Amdt. 4 CANCELLED
Bartlesville, OK—Frank Phillips, VOR RWY 17, Amdt. 10
Bartlesville, OK—Frank Phillips, VOR/DME RWY 35, Amdt. 5
Bartlesville, OK—Frank Phillips, LOC RWY 17, Amdt. 2
Bartlesville, OK—Frank Phillips, NDB RWY 17, Amdt. 1
Georgetown, SC—Georgetown County, NDB RWY 5, Amdt. 5
Nashville, TN—Nashville International, LDA/DME RWY 2C, Amdt. 2, CANCELLED
Sheridan, WY—Sheridan County, NDB RWY 31, Amdt. 1, CANCELLED

** * * Effective May 30, 1991*

St. Louis, MO—Lambert-St. Louis Intl, LOC BC RWY 6, Amdt. 2
St. Louis, MO—Lambert-St. Louis Intl, LDA/DME RWY 30L, Amdt. 1
St. Louis, MO—Lambert-St. Louis Intl, ILS RWY 24, Amdt. 43
St. Louis, MO—Lambert-St. Louis Intl, RNAV RWY 6, Amdt. 1
St. Louis, MO—Lambert-St. Louis Intl, RNAV RWY 24, Amdt. 2
New York, NY—LaGuardia, VOR RWY 4, Amdt. 2
Batavia, OH—Clermont County, VOR-B, Amdt. 4
Huntsville, TX—Huntsville Muni, NDB RWY 18, Amdt. 3, CANCELLED
Huntsville, TX—Huntsville Muni, NDB RWY 18, Orig.

** * * Effective April 24, 1991*

Texarkana, AR—Texarkana Regional-Webb Field, ILS RWY 22, Amdt. 14

** * * Effective April 18, 1991*

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Louisiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions and additional requirements, of an amendment to the Louisiana permanent regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Louisiana's rules pertaining to definitions; areas where mining is prohibited or limited; areas designated unsuitable for surface coal mining; requirements for permit applications; coal exploration; permit requirements for legal, financial, and compliance information, permit requirements for environmental resources information; permit requirements for reclamation and operations plans; permits for special categories of mining; public

participation, approval of applications, and permit terms and conditions; revision, renewals, and transfer, sale, and assignment of permit rights; small operator assistance; bonding and insurance requirements; permanent program performance standards; inspections; enforcement; and civil penalties. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, improve operational efficiency, and incorporate the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

On October 10, 1980, the Secretary of the Interior approved the Louisiana program. The October 10, 1980, **Federal Register** (45 FR 67340) gives general background information regarding the Louisiana program, including information on the Secretary's findings and the disposition of comments on the program, as well as a detailed explanation of the conditions of its approval. Subsequent actions concerning the Louisiana program are identified at 30 CFR 918.16.

II. Submission of Proposed Amendment

In accordance with the provisions of 30 CFR 732.17(c), OSM notified Louisiana by letters dated July 9, 1986 (administrative record No. LA–265), June 9, 1987 (administrative record No. LA–261), December 12, 1988 (administrative record No. LA–289), and May 11 and November 16, 1989 (administrative record Nos. LA–291 and LA–294), of the changes that were necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations as revised between October 10 and August 30, 1989.

To comply with these notifications and to meet other needs and State objectives, Louisiana elected to undertake a complete revision of the rules for its program. The proposed rules, subpart 1, chapter 1, through subpart 5, chapter 73, would replace subchapter A, part 100, through subchapter K, part 246. By letter dated January 19, 1990 (administrative record No. LA–295), Louisiana submitted these proposed rules to OSM for review. More specifically, Louisiana proposed revisions to the Louisiana Surface Mining Regulations (LSMR) at: Chapter 1, general—definitions; Chapter 11, areas where mining is prohibited or limited; Chapters 13 and 15, areas designated unsuitable for surface coal mining; Chapters 17 and 19, requirements for permit applications; Chapter 21, coal exploration; Chapter 23, permit requirements for legal, financial, and compliance information; Chapter 25, permit requirements for environmental resources information; Chapter 27, permit requirements for reclamation and operations plans; Chapter 29, permit requirements for special categories of mining; Chapter 31, public participation, approval of applications, and permit terms and conditions; Chapter 35, permit revisions, renewals, and transfer, sale, and assignment of permit rights; Chapter 37, small operator assistance; Chapters 39, 41, 43, 45, and 47, bonding and insurance requirements; Chapters 51, 53, 55, and 59, permanent program performance standards; Chapter 63, inspections; Chapter 65, enforcement; and Chapter 69, civil penalties. The abandoned mine land reclamation plan as approved by OSM on November 10, 1986 (51 FR 40793) remains in effect and is unchanged by this amendment.

On February 20, 1990, OSM published a notice in the **Federal Register** announcing its receipt of the proposed amendment to the Louisiana program and inviting public comment on the adequacy of the amendment (55 FR 5858; administrative record No. LA–299). The comment period closed on March 22, 1990. After reviewing the proposed amendment and all comments it had received during the comment period, OSM notified Louisiana by letters dated April 27 and July 6, 1990 (administrative record Nos. LA–304 and LA–306) of several provisions in the amendment that appeared to be inconsistent with the Federal regulations. By letters dated August 14 and September 7, 1990 (administrative record Nos. LA–308 and LA–310), Louisiana submitted to OSM revisions to and clarification of the proposed amendment that addressed OSM's concerns.

To allow the public an opportunity to comment on the revised amendment, OSM published a notice in the **Federal Register** on October 18, 1990 (55 FR 42207), reopening and extending the public comment period (administrative record No. LA–315). The reopened comment period closed on November 2, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Louisiana on January 19, 1990, as subsequently revised on August 14 and September 7, 1990. The Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the Louisiana program.

1. General

In general, with minor changes to improve clarity and specificity and to replace Federal references and terms with State references and terms, Louisiana's proposed rules are substantively identical to the corresponding Federal regulations. The proposed rules deviate from the Federal language to (1) reflect the decisions of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III,* No. 79–1144 (D.D.C. Oct. 1, 1984), 21 Env't Rep. Cas. 1724 and 620 F. Supp. 1519 (D.D.C. 1985); hereinafter referred to, respectively, as *PSMRL II, Round II, and PSMRL II, Round III),* and (2) conform to State requirements concerning administrative procedures and reviews. (Louisiana's Administrative Procedures Act and Subpart 5, Chapters 33 and 67, special rules applicable to surface coal mining review hearings and appeals, replace the Federal administrative procedures at 43 CFR Part 4.)

Louisiana's original program was approved with no detailed permit requirements for concurrent surface and underground mining, auger mining, operations in alluvial valley floors, mountaintop removal, and multiple seam mining on steep slopes (45 FR 58576, 58582, finding No. 4(b)(15)(ii)). Section 906E of the Louisiana Surface Mining and Reclamation Act (LSMRA) prohibits underground mining and auger mining and requires persons wishing to underground or auger mine to submit an application 36 months prior to the time operations are planned to begin so that legislation can be considered by the Louisiana legislature and regulations promulgated as necessary to comply with SMCRA.

Louisiana's original program was also approved with no provisions corresponding to 30 CFR 701.11(a) and (b) to provide for continued operations for 8 months after the date of the State program approval (45 FR 58576, 58580, finding No. 4(c)(15)(i)), because there were no surface coal mining operations in existence in Louisiana prior to the original program approval. For the same reason, initial program rules corresponding to 30 CFR part 710 were

not included in the original program. Because no surface coal mining operations existed prior to program approval, Louisiana proposes to delete its existing rule at LSMR 171.13 which provides for implementation of a Federal program should an application for surface coal mining be made prior to its permanent program approval. Also because no surface coal mining operations existed in Louisiana prior to permanent program approval, there is no need for a definition of "previously mined areas" or for remining rules. Therefore, Louisiana's proposed rules have no counterparts to the Federal regulations at 30 CFR 701.5 (definition of "previously mined areas") and 30 CFR 816.106 (remining).

The Director finds that none of these changes alters the original findings, made at the time of program approval as required by 30 CFR 732.15 (b) through (d), concerning Louisiana's authority and capability to implement, administer and enforce a program to regulate coal exploration and surface coal mining and reclamation operations (45 FR 58576, September 4, 1980, and 45 FR 67340, October 10, 1980). Therefore, the Director finds that the proposed amendment, except as discussed below, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

Discussed below are only those proposed rules that (1) are less effective than the corresponding Federal regulations or (2) require additional explanation prior to approval. Provisions that are not discussed either (1) contain language that is the same as or similar to the corresponding Federal regulations and are not substantively different from them or (2) add specificity or lack a Federal counterpart and do not adversely affect other aspects of the program.

2. LSMR 105.A, Definitions.

(a) Affected Area

Louisiana proposes a definition of "affected area" at LSMR 105.A.7 which differs from the Federal definition of "affected area" at 30 CFR 701.5 to the extent that it does not exclude from regulation all roads with more than incidental public use. In *PSMRL II, Round III,* the U.S. District Court remanded the Federal definition of "affected area" at 30 CFR 701.5 because it excluded all roads with more than incidental public use, an exclusion which the court found to be inconsistent with the definition of "surface coal mining operations" at section 701(28) of SMCRA.

The Director finds that Louisiana's proposed definition of "affected area" at LSMR 105.A.7 conforms to the court's decision because it is consistent with the definition of "surface coal mining operations" at LSMR 147, which corresponds to the definition of "surface coal mining operations" at section 701(28) of SMCRA. Therefore, the Director approves the proposed definition of "affected area" at LSMR 105.A.7.

(b) Valid Existing Rights (VER)

With certain exceptions, Louisiana proposes at LSMR 105.A.160 a definition for VER that is substantively identical to the corresponding Federal definition of VER at 30 CFR 761.5. The exceptions are those provisions corresponding to the provisions of the Federal definition of VER that have been suspended by OSM. These provisions were not included in Louisiana's proposed definition of VER.

OSM suspended the provisions of the Federal definition at 30 CFR 761.5 (a), (c), and (d)(2) in response to the court decision, PSMRL II, Round II, that remanded these regulations (51 FR 41952, 41954, November 20, 1986).

OSM suspended paragraphs (a) and (d)(2) insofar as they would authorize use of the "takings test" (taking of a person's property for which compensation would have to be paid under the Fifth and Fourteenth Amendments to the U.S. Constitution) to determine whether a person has VER. OSM reinstated its previous March 13, 1979, regulation at 30 CFR 761.5(a) (51 FR 41952, 41954, November 20, 1986).

OSM suspended paragraph (c) to the extent that it would expand VER under the "needed for and adjacent to test" to include lands for which the claimant had not acquired the necessary property rights for mining prior to August 3, 1977. The 1979 Federal definition of VER included a needed for and adjacent to test allowing a person to claim VER if, as of August 3, 1977, he or she possessed a legally binding conveyance, lease, deed, contract or other document authorizing the applicant to conduct surface coal mining operations, and he or she could demonstrate that the coal is both needed for and adjacent to an ongoing surface coal mining operation for which all approvals and permits were obtained prior to August 3, 1977.

Because Louisiana has proposed language at LSMR 105.A.160 that is substantively identical to the language of the Federal regulation at 30 CFR 761.5 as revised by the suspensions of 30 CFR 761.5(a), (c), and (d)(2), the Director finds that Louisiana's proposed definition of VER at LSMR 105.A.160 is no less effective than the corresponding Federal definition at 30 CFR 761.5. Therefore, the Director approves Louisiana's proposed definition of VER at LSMR 105.A.160.

3. LSMR 107, Applicability

(a) LSMR 107(b), 2-Acre Exemption

Louisiana proposes to delete existing LSMR 107(b). This rule exempts from the requirements of the State surface mining law those operations that extract coal for commercial purposes and affect 2 acres or less. Existing LSMR 107(b) corresponds to the Federal regulations at 30 CFR 700.11(b).

As originally enacted, section 528(2) of SMCRA (30 U.S.C. 1276) exempted from the requirements of SMCRA coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Louisiana's proposed revision would remove from LSMR 107 the language preempted by Public Law 100–34. Removal of the acreage exemption from the Louisiana rules will preclude confusion on the part of the public, which may not be aware of the Federal preemption.

The Director finds that the proposed deletion of Louisiana's existing LSMR 107(b) regarding the 2-acre exemption is no less stringent than section 528(2) of SMCRA, as amended by Public Law 100–34. Therefore, the Director approves the proposed deletion of LSMR 107(b).

The Director encourages Louisiana to make a similar deletion of the 2-acre exemption from Louisiana's Surface Mining and Reclamation Act at section 927(2).

(b) LSMR 107.G, Termination of Jurisdiction.

Louisiana proposes LSMR 107.G.1 and 2 regarding termination of jurisdiction that is substantively identical to the corresponding Federal regulations at 30 CFR 700.11(d). However, the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 700.11(d) were contrary to sections 521(a)(1) and (a)(2) of SMCRA (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, and 89–0141, D.D.C., August 30, 1990). More specifically, the court interpreted sections 521(a)(1) and (a)(2) as imposing an on-going duty upon the Secretary of the Interior to correct violations of SMCRA. Accordir g'y, the

court remanded the Federal regulations at 30 CFR 700.11(d) to the Secretary to be withdrawn or revised.

Because the Director is pursuing an appeal of the court's remand of this rule, the Director is deferring his decision on proposed LSMR 107.G.1 and 2. Until such time as the Director takes action on his deferral and decides to approve or not approve the proposed rules, Louisiana may not promulgate and implement proposed LSMR 107.G.1 and 2.

The Director will, pursuant to 30 CFR 732.17(d), notify Louisiana of any regulatory changes needed for the above rules.

4. LSMR 2523. Probable Hydrologic Consequences (PHC) Determinations

The Federal regulations regarding PHC determinations at 30 CFR 780.21(f) and 784.14(e) were challenged in PSMRL II, Round III on the grounds that they were wrongly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." Rather than ruling on the substance of this argument, the court instead remanded the rules on procedural grounds. As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952 at 41957, November 20, 1986). OSM reexamined the regulations and on September 19, 1988, promulgated regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394, 36400).

However, in the preamble to the new regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas ("life of the permit") was appropriate. OSM interprets the PHC determination to apply to all activities authorized under the permit for the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be "spatial" rather than "temporal" in nature (53 FR 36394, 36396–36399, September 19, 1988). A "temporal" PHC determination would apply to all known mining activities associated with the initial permit area and those which may occur during the life of the mine (emphasis added).

Louisiana's proposed LSMR 2523 is substantively identical to the Federal regulations at 30 CFR 780.21(f) and 784.14(e). However, Louisiana has not revised its regulations or submitted a policy statement specifying its interpretation of the PHC rules. The Director finds that Louisiana's proposed LSMR 2523 does not render the Louisiana program less effective than the corresponding Federal regulations at 30 CFR 780.21(f) and 784.14(e) and he approves it. However, to be no less effective than the Federal regulations at 30 CFR 780.21(f) and 784.14(e) as interpreted by OSM at 53 FR 36394, 36396–36399 (September 19, 1988), the Director requires that Louisiana submit as a program amendment a policy statement specifying its interpretation of LSMR 2523 regarding "spatial" or "temporal" PHC determinations.

5. Rule 5327. Siltation Structures

Louisiana proposes to delete existing LSMR 5327.B(2). LSMR 5327.B(2) requires all surface drainage from the disturbed area be passed through a siltation structure before leaving the permit area. LSMR 5327.B(2) is substantively identical to the Federal regulation at 30 CFR 816.46(b)(2), which OSM suspended.

OSM suspended 30 CFR 816.46(b)(2) in response to the court decision, PSMRL II, Round II, that remanded this regulation. OSM suspended paragraph (b)(2) because the use of sediment ponds and other siltation structures does not necessarily constitute use of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area (51 FR 41952 at 41957, November 20, 1986). The use of BTCA is required by sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA. OSM's suspension of 30 CFR 816.46(b)(2) means that regulatory authorities must determine on a case-by-case basis what constitutes BTCA as defined by State programs. In those instances where sedimentation ponds or other siltation structures are determined to be BTCA, the State's performance standards corresponding to the Federal regulations at 30 CFR 816.46(b), (c), and (d) will continue to apply. Where BTCA includes a discharge from a point source, effluent limits will continue to apply and a National Pollution Discharge Elimination System permit is needed. In situations where sediment control measures other than siltation structures are determined as BTCA, the State's performance standards corresponding to 30 CFR 816.45 will be applicable.

Because Louisiana's proposed deletion of existing LSMR 5327.B(2) is consistent with OSM's suspension of 30 CFR 816.46(b)(2), the Director finds that the proposed deletion is consistent with the court decision and is no less stringent than sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA.

6. LSMR 5375 and 5381, End or Side Dumping for Coal Processing Waste Banks

Louisiana proposes at LSMR 5375, among other things, that all coal processing waste be hauled or conveyed and placed in disposal areas within the permit area approved by Louisiana, and that the disposal area be designed, constructed and maintained in accordance with LSMR 5367. Louisiana's proposed LSMR 5367.C requires that spoil be hauled or conveyed and placed in a controlled manner and concurrently compacted in lifts no greater than 4 feet or less if required by Louisiana.

The Federal regulation at 30 CFR 816.81(a) requires that all coal mine waste be placed in a disposal area within a permit area which is approved by the regulatory authority for this purpose. However, OSM suspended 30 CFR 816.81(a) in response to the court decision, PSMRL II, Round II, that remanded this regulation. OSM suspended paragraph (a) insofar as it allowed end dumping or side dumping of coal mine waste in coal mine waste disposal areas (51 FR 41952 at 41959, November 20, 1986).

Because Louisiana's proposed LSMR 5375 requires that coal processing waste be hauled or conveyed and placed in a disposal area, it implicitly prohibits end or side dumping. Furthermore, Louisiana's proposed LSMR 5367.C requires that spoil shall be hauled or conveyed and placed in a controlled manner. Such language explicitly prohibits end or side dumping. Therefore, Louisiana's proposed LSMR 5375 reflects the suspension of 30 CFR 816.81(a). Based on the above, the Director finds that Louisiana's proposed LSMR 5375 is no less effective than the Federal regulation at 30 CFR 816.81 and he approves it.

7. LSMR 5389, Disposal of Noncoal Wastes

Louisiana proposes at LSMR 5389 that (1) noncoal wastes, including but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area, (2)

placement and storage shall insure that leachate and surface runoff do not degrade surface water or ground water, and (3) final disposal of noncoal wastes be in a designated disposal site in the permit area, disposal sites shall, among other things, be designed and constructed with appropriate water barriers on the bottom and sides of the designated site, and that operation of the disposal site be conducted in accordance with all local, State and Federal requirements.

The Federal regulations at 30 CFR 816.89(d) and 817.89(d) require that noncoal mine waste, defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) and 40 CFR part 261, be handled in accordance with Subtitle C of RCRA and any implementing regulations. However, the Federal regulations at 30 CFR 816.89(d) and 817.89(d) were suspended on November 20, 1986 (51 FR 41952), to implement the decision of the U.S. District Court for the District of Columbia in PSMRL II, Round III. The court remanded these rules because OSM failed to comply with the public notice and public comment requirements of the Administrative Procedures Act in promulgating these Federal regulations. No substantive issues were involved (51 FR 41952 at 41959). Because of the court's remand of 30 CFR 816.89(d) and 817.89(d), OSM may not use these regulations in evaluating the sufficiency of Louisiana's proposed rules. Accordingly, OSM evaluated Louisiana's proposed amendments based upon their consistency with the court's decision and the applicable provisions of SMCRA.

As stated previously, the court's decision to remand the Federal regulations was based solely on procedural rather than substantive grounds. Since the Louisiana rulemaking process has provided for adequate public participation, the promulgation by Louisiana of its proposed rule is not inconsistent with the court's ruling.

Section 515(b)(14) of SMCRA generally states that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are to be treated or buried and compacted or otherwise disposed of in a manner to prevent contamination of ground or surface waters. Because Louisiana's proposed LSMR 5389 provides for the handling and disposal of such material in a manner designed to prevent contamination of ground or surface waters, the Director finds that Louisiana's proposed LSMR 5389 is no less stringent than section 515(b)(14) of SMCRA, and he approves it.

8. LSMR 52103 and 53105, Contemporaneous Reclamation

Louisiana proposes at LSMR 53103 that reclamation efforts occur as contemporaneously as practicable with mining operations. Louisiana also proposes at LSMR 53105 schedules for backfilling and grading that include time and distance factors for contour mining and area strip mining, and an allowance for a time schedule to be approved by Louisiana for open-pit mining with thin overburden.

Louisiana's proposed rule requires (1) for contour mining that rough backfilling and grading follow coal removal by not more than 60 days or 1,500 linear feet, (2) for open-pit mining with thin overburden that Louisiana shall approve a schedule, on the basis of materials submitted under Rule 2715.B.3, by which time rough backfilling and grading shall occur, and (3) for area strip (surface) mining that rough backfilling and grading be completed within 180 days following coal removal and not more than four spoil ridges behind the pit being worked.

OSM's contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by the U.S. District Court for the District of Columbia in PSMRL II, Round II to the extent that it did not specify both time and distance factors defining contemporaneous reclamation (PSMRL II, Round II, Mem. Op. at 52). The Federal regulation at 30 CFR 816.101(a) (44 FR 15312 at 15411, March 13, 1979), which had been in effect prior to OSM's promulgation of the remanded regulation at 30 CFR 816.100, did specify such time and distance factors.

Although OSM never actually suspended the remanded regulation, OSM may not, because of the court's remand, use the June 1, 1983, Federal regulation in evaluating the sufficiency of Louisiana's proposed rule. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the court's decision and the applicable provisions of SMCRA.

Louisiana's proposed LSMR 53103 and 53105 are substantively identical to the March 13, 1979, Federal regulation at 30 CFR 816.101(a). Thus, Louisiana's proposed LSMR 53103 and 53105 are consistent with the court's decision in that they do specify objective and reasonable time and distance factors defining contemporaneous reclamation.

Section 515(b)(16) of SMCRA provides that reclamation efforts are to proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. It does not expressly define contemporaneous reclamation. The Director therefore finds that Louisiana's proposed LSMR 53103 and 53105 are no less stringent than section 515(b)(16) of SMCRA, and he approves them.

9. LSMR 53111 and 53113, Backfilling and Grading of Thin and Thick Overburden Surface Mines

Louisiana proposes requirements at LSMR 53111 and 53113, respectively, that provisions for thin overburden apply when the final thickness of the overburden is less than 0.8 percent of the initial thickness, and that provisions for thick overburden apply when the final thickness of the overburden is greater than 1.2 percent of the initial thickness.

On October 1, 1984, the U.S. District Court for the District of Columbia in PSMRL II, Round II remanded OSM's backfilling and grading regulations for thin and thick overburden surface mines at 30 CFR 816.104(a) and 816.105(a) (48 FR 23356 at 23369, May 24, 1983) because the regulations did not provide objective formulae for defining thick and thin overburden (PSMRL II, Round II, Mem. Op. at 53). The Federal regulations at 30 CFR 816.104(a) and 816.105(a) (44 FR 15312 at 15411, March 13, 1979) that had been in effect prior to OSM's promulgation of the remanded regulations at 30 CFR 816.104(a) and 816.105(a) did specify such objective formulae.

Although OSM never actually suspended the remanded regulations, OSM may not, because of the court's remand, use the May 24, 1983, Federal regulations in evaluating the sufficiency of Louisiana's proposed rules. Accordingly, OSM evaluated the proposed rules based upon their consistency with the court's decision and the applicable provisions of SMCRA.

Louisiana's proposed LSMR 53111 and 53113, respectively, are substantively identical to the March 13, 1979, Federal regulations at 30 CFR 816.104(a) and 816.105(a). Thus, Louisiana's proposed rules are consistent with the court's decision in that they do specify objective and reasonable formulae for defining thick and thin overburden.

Section 515(b)(3) of SMCRA creates a limited exception, with regard to areas of thin and thick overburden, from the general statutory requirement to restore disturbed lands to approximate original contour. More specifically, section 515(b)(3) states that if the overburden is either insufficient or more than

sufficient to restore approximate original contour, then operators must use overburden and other spoil and waste materials to attain the lowest practical grade, but not more than the angle of repose. Section 515(b)(3) of SMCRA does not expressly define thin and thick overburden. The Director therefore finds that Louisiana's proposed LSMR 53111 and 53113 are no less stringent than section 515(b)(3) of SMCRA, and he approves them.

10. LSMR 53123 and 53125, Revegetation Success Standards

(a) LSMR 53123.A.1, 2, and 3

Louisiana proposes at LSMR 53123.A.1, 2, and 3 various techniques for estimating ground cover, productivity, and live stems per acre. However, Louisiana only lists the names of the techniques; it does not provide sufficient information to document that statistically valid sampling techniques will be used to determine revegetation success for phase III bond release, as required by the Federal regulation at 30 CFR 816.116(a)(1). Therefore, the Director finds proposed LSMR 53123.A.1, 2, and 3 less effective than 30 CFR 816.116(a)(1). The Director approves LSMR 53123.A.1, 2, and 3; however, he is requiring that Louisiana further revise LSMR 53123.A.1, 2, and 3 to provide detailed descriptions of each technique it proposes to allow, or reference documents that include detailed descriptions of the allowed techniques. Either source must contain a description of each step within each technique. If Louisiana chooses to reference the documents in its rules, the documents must be submitted to OSM as part of the amendment package.

(b) LSMR 53123.A.4

Louisiana proposes at LSMR 53123.A.4 that "[e]stimates of the mean for particular parameters shall be statistically valid. Sample adequacy shall be determined by the following formula: ($N_{min}=(t^2s^2)/(dx)^2$) Minimum sample size shall be 10. Maximum sample size shall be 30." Louisiana does not explicitly state that sample adequacy must be met for cover, production, and/or woody plant densities, as required by the Federal regulation at 30 CFR 816.116(a)(2). In addition, by placing a maximum size limit on the sample size, Louisiana has not ensured that sampling be based on statistically valid techniques as required by the Federal regulation at 30 CFR 816.116(a)(1). Therefore, the Director finds proposed LSMR 53123.A.4 less effective than the Federal regulations at 30 CFR 816.116(a) (1) and (2). The Director does not approve LSMR 53123.A.4 to the extent that it places a maximum limit on a sample size. Specifically he does not approve the statement "[m]aximum sample size shall be 30." He is requiring Louisiana to (1) remove the statement " [m]aximum sample size shall be 30" and (2) further revise LSMR 53123.A.4 to clarify that the sample adequacy must be met for ground cover, productivity, and/or woody plant densities.

(c) LSMR 53123.B.1

As written, Louisiana's proposed rule at LSMR 53123.B.1 requires for pasture land that ground cover and production be equal to a reference area, historical records, and technical documents, rather than requiring that ground cover and production be equal to one of the three options. Louisiana clarified (administrative record No. LA–314) that it intended that ground cover and production be equal to one of the three options. Based on this clarification, the Director finds proposed LSMR 53123.B.1 no less effective than the Federal regulation at 30 CFR 816.116(b). He approves LSMR 53123.B.1 with the understanding that Louisiana will correct the typographical error by adding the word "selected" before "from the following methods."

(d) LSMR 53123.B.1.b and c, 53123.B.2.b and c, and 53123.B.3.b and c

Louisiana proposes at LSMR 53123.B.1.b and c, 53123.B.2.b and c, and 53123.B.3.b and c to allow a permittee to choose historical records or technical documents to use in determining the success of productivity and ground cover on mined lands reclaimed for pasture land, grazing land, and cropland. Louisiana proposes that a "historic record would consist of at least four growing seasons of data, collected to achieve sample adequacy. The mean value for each parameter from each yearly sampling period would be averaged to obtain an overall mean. This value would then be used as the success standard." Louisiana also proposes that "[s]tandards established by reference to technical documents of the USDA, USDI, or other authorities are allowed when specifically approved by the office. The office should be consulted prior to the use of this approach."

The Federal regulations at 30 CFR 816.116(b) (1) and (2) allow for the regulatory authority to approve success standards for productivity and ground cover from sources other than reference areas. However, 30 CFR 816.116(a)(1) requires that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program (i.e., approved by the Director).

Because Louisiana has not included the historical records or the specific technical documents it would allow, the Director finds proposed LSMR 53123.B.1.b and c, 53123.B.2.b and c, and 53123.B.3.b and c less effective than the Federal regulation at 30 CFR 816.116(a)(1). The Director approves these rules but requires that Louisiana (1) further revise LSMR 53123.B to include or reference, in its rules, those documents or historical records it intends to allow, or (2) specify the technical criteria it would use to select and approve any document or historical record. If Louisiana references specific historical records or technical documents it must submit these to OSM as part of a program amendment.

(e) LSMR 53123.B.2.a

Louisiana proposes at LSMR 53123.B.2.a that "[w]eighted average comparisons are appropriate" when using reference areas to determine the success of revegetation of grazing land. 30 CFR 816.116(a)(1) requires that statistically valid sampling techniques be selected by the regulatory authority and included in an approved regulatory program (i.e., approved by the Director). Because OSM cannot determine, based on the information provided at LSMR 53123.B.2.a, whether "weighted average comparisons" is a statistically valid sampling technique, the Director finds LSMR 53123.B.2.a less effective than 30 CFR 816.116(a)(1). The Director approves LSMR 53123.B.2.a but requires that Louisiana further revise LSMR 53123.B.2.a to explain what is meant by "weighted average comparison" and to explicitly state whether such comparisons are required.

(f) LSMR 53123.B.4 and 53125.A and B

Louisiana proposes (1) at LSMR 53123.B.4 programwide success standards for live stems per acre, and permit-specific consultation with and approval by the Louisiana Department of Agriculture and Forestry for ground cover, on lands with the land use designated as forestry, (2) at LSMR 53125.A programwide procedures used to determine stocking (i.e., live stems per acre), and (3) at LSMR 53125.B programwide minimum performance standards where commercial forest land is the approved postmining land use.

The Federal regulation at 30 CFR 816.116(b)(3) requires that success standards for areas to be developed for forest products shall be determined on

the basis of tree and shrub stocking and vegetative ground cover, that such parameters shall be specified on the basis of local and regional conditions after consultation with and approval by the State agencies responsible for the administration of forestry, and that the consultation and approval may occur on either a programwide or a permit-specific basis.

Louisiana submitted with its proposed amendment, a letter dated June 13, 1990, from the Louisiana Department of Agriculture and Forestry stating that the programwide regulations concerning forestry and commercial forest land at LSMR 53123 and 53125 "are acceptable for regeneration of surface mined forest lands for the production of various wood products."

However, at LSMR 53125.B.3, Louisiana requires that the sampling methods (used to determine the number of trees or shrubs and the ground cover) be approved by the regulatory authority. The Federal regulation at 30 CFR 816.116(a)(1) requires that statistically valid sampling techniques be selected by the regulatory authority and included in an approved regulatory program (i.e., approved by the Director).

Based on the above, the Director finds proposed LSMR 53123.B.4, LSMR 53125.A and B, with the exception of LSMR 53125.B.3, no less effective than the Federal regulation at 30 CFR 816.116(b)(3). The Director finds proposed LSMR 53125.B.3 less effective than the Federal regulation at 30 CFR 816.116(a)(1) to the extent that Louisiana has not submitted statistically valid sampling techniques for the determination of the success of stocking and ground cover on commercial forest lands.

The Director approves proposed LSMR 53123.B.4, LSMR 53125.A and B; however, the Director is requiring Louisiana to further amend LSMR 53125.B.3 to include in its rules, or to reference, statistically valid sampling techniques for the determination of the success of stocking and ground cover for commercial forest lands.

In addition, Louisiana must correct the typographical errors at LSMR 53125.A.2 and 53125.B.3 and 4. At LSMR 53125.A.2, the reference to 53123.B.3.b should be 53123.B.4.a. At LSMR 53125.B.3 and 4, the references to 53123.B.3 should be 53123.B.4.

(g) LSMR 53123.B.5, 6, and 7

Louisiana proposes (1) at LSMR 53123.B.5 and 6 that the vegetative ground cover shall not be less than 70 percent for areas developed for residential and industrial/commercial use, and (2) at LSMR 53123.B.7 that the standard for vegetative ground cover for areas developed for recreation shall not be less than 70 percent and that consultation with and approval by the Louisiana Department of Wildlife and Fisheries must be obtained for this standard on a permit-specific basis.

The Federal regulations at 30 CFR 816.116(b)(3)(i) and (iii) require, on a programwide or permit-specific basis, consultation with and approval by the State agency responsible for the administration of forestry and wildlife for minimum stocking and planting arrangements and that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. The Federal regulation at 30 CFR 816.116(b)(4) requires for areas to be developed for industrial, commercial, or residential use, the vegetative ground cover shall not be less than that required to control erosion.

Because 70 percent ground cover is sufficient to control erosion for the topographic conditions present in Louisiana, the Director finds LSMR 53123.B.5 and 6 no less effective than the Federal regulation at 30 CFR 816.116(b)(4). Because Louisiana requires, on a permit-specific basis, consultation with and approval by the Louisiana Department of Wildlife and Fisheries for vegetative ground cover for areas developed for recreation, the Director finds LSMR 53123.B.7 no less effective than the Federal regulation at 30 CFR 816.116(b). Therefore, the Director approves proposed LSMR 53123.B.5, 6, and 7.

(h) LSMR 53123.B.9

Louisiana proposes that vegetative ground cover shall not be less than 70 percent for areas with a postmining designation of "undeveloped." OSM does not recognize undeveloped land as a postmining land use because the intention of the reclamation is to return mined land to a managed land use. Undeveloped land is not managed. Therefore, the Director finds proposed LSMR 53123.B.9 less effective than 30 CFR 816.116(b). The Director does not approve LSMR 53123.B.9 and requires that Louisiana remove the performance standard for vegetative ground cover on undeveloped lands.

(i) LSMR 53123.C.3

Louisiana proposes at LSMR 53123.C.3 that it may approve selective husbandry practices, excluding augmented seeding, fertilization or irrigation, provided it obtains prior approval from the Director of OSM. In addition, Louisiana has submitted for the Director's approval the following normal husbandry techniques: disease, pest and vermin control, the use of firelanes in protecting young stands from fire, and any pruning, reseeding or transplanting specifically necessitated by such actions. Louisiana submitted three documents proposed for use by the regulatory authority in determining limitations of selected husbandry practices. They are (1) 1990 Insect Control Guide, (2) Louisiana's Suggested Chemical Weed Control Guide for 1990, and (3) 1990 Louisiana Plant Disease Control Guide, all published by the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center. These documents discuss specific rates of applications of herbicides and pesticides, as well as common practices such as crop rotation, for disease control, weed control, and insect/pest control. In specific instances, the documents identify transplanting, pruning, and/or reseeding as appropriate actions. Louisiana stated, "[t]hese three publications shall be used by the Office of Conservation in determining limitations of selected husbandry practices" (administrative record No. LA–308).

In addition, Louisiana submitted with its proposed amendment a letter from the Louisiana Cooperative Extension Service, dated August 22, 1990, that the practices listed in LSMR 53123.C.3 are normal and common for the State (administrative record No. LA–308).

Based on the above, the Director finds that LSMR 53123.C.3 is no less effective than the Federal regulation at 30 CFR 816.116(c)(4). The Director approves proposed LSMR 53123.C.3 and approves as normal husbandry practices, as defined in the documents listed above, disease, pest and vermin control, and any pruning, reseeding or transplanting specifically necessitated by such actions, and the use of firelanes in protecting young stands from fire. However it should be noted, with respect to transplanting or reseeding of trees and shrubs, that the proposed success standard for woody plants at LSMR 53123.B.3.b effectively restricts such replanting to 20 percent of the stems counted to determine whether revegetation success has been achieved.

(j) LSMR 53125.C

Louisiana proposes at LSMR 53125.C programwide minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land.

As discussed in finding No. 11(f), Louisiana submitted a letter dated June 13, 1990, from the Louisiana Department

of Agriculture and Forestry stating that the performance standards at LSMR 53123 and 53125 "are acceptable for regeneration of surface mined forest lands for the production of various wood products." However, Louisiana has not submitted a letter from the Louisiana Department of Wildlife and Fisheries granting programwide approval of the performance standards at LSMR 53135.C for areas developed for wildlife management (including shelter belts), recreation, and forest uses other than commercial forest land. Because programwide consultation and approval has not been obtained, Louisiana must obtain the Louisiana Department of Wildlife and Fisheries' consultation and approval on a permit-specific basis.

The Federal regulation at 30 CFR 816.116(b)(3)(i) requires that minimum stocking and planting arrangements shall be developed after consultation with and approval by the State agency responsible for the administration of wildlife and forestry programs, on either a programwide or permit-specific basis.

Therefore, the Director finds LSMR 53125.C less effective than the Federal regulation at 30 CFR 816.116(b)(3) to the extent that it does not require permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries for the performance standards at LSMR 53125.C for those areas to be developed for wildlife management, recreation, shelter belts, and forest uses other than commercial forest land.

The Director approves proposed LSMR 53125.C regarding programwide consultation and approval by the Louisiana Department of Agriculture and Forestry for the listed performance standards (with the exception of LSMR 53125.C.3.b as discussed below at finding No. 11(k)); however, he is not approving proposed LSMR 53125.C to the extent that it does not require permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries for the performance standards at 53125.C for those areas to be developed for wildlife management, recreation, shelter belts, and forestry other than commercial forest land.

The Director is requiring Louisiana to further revise LSMR 53125.C to require permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries prior to use of the performance standards at LSMR 53125.C on mined lands reclaimed for wildlife management, recreation, shelter belts, and forest uses other than commercial forest land.

(k) *LSMR 53125.C.3.b.* Louisiana proposes at LSMR 53125.C.3.b (for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land) that upon expiration of the 5-year responsibility period and at the time of request for bond release, (1) each permittee shall provide documentation showing that the ground cover of the revegetated area satisfies LSMR 53123.B.3, and (2) that species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

The Federal regulation at 30 CFR 816.116(a)(1) requires Louisiana to submit all standards that will be used to evaluate the success of revegetation.

Because Louisiana has not submitted the standards by which it will evaluate the success of revegetation, the Director finds LSMR 53125.C.3.b less effective than 30 CFR 816.116(a)(1). He is not approving the phrase "on the basis of results which could reasonably be expected" at LSMR 53125.C.3.b. The Director requires that Louisiana further revise LSMR 53125.C.3.b to (1) remove the phrase "on the basis of results which could reasonably be expected" and (2) provide a description of, or to reference, the means by which it will evaluate diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land. For example, species diversity, seasonality, and regenerative capacity could be determined by the seed mix, by comparison to a reference area, or by technical standards.

In addition, Louisiana must correct the typographical error at LSMR 53125.C.3.b; the reference regarding ground cover should be to LSMR 53123.B.4.

11. LSMR 6301.E Inspections of Abandoned Sites.

Louisiana proposes LSMR 6301.E regarding inspections of "abandoned sites" that is substantively identical to the Federal regulation at 30 CFR 840.11(g) and (h). However, the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 840.11(g) and (h) were inconsistent with section 517(c) of SMCRA. Section 517(c) of SMCRA requires an average of 12 partial and 4 complete inspections per year. Accordingly, the court remanded the Federal regulations at 30 CFR 840.11(g) and (h) to the Secretary to be withdrawn or revised (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, and 89–0141, D.D.C., August 30, 1990).

Although OSM has not yet actually suspended the above Federal regulations, OSM may not, because of the court's remand, use the regulations at 30 CFR 840.11(g) and (h) in evaluating the sufficiency of Louisiana's proposed rule. Accordingly, OSM evaluated the proposed rule based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based upon (1) the court's finding that the 30 CFR 840.11(g) and (h) is contrary to the provisions of SMCRA, and (2) the court's specific instruction to withdraw or revise 30 CFR 840.11(g) and (h), the Director finds that, Louisiana's proposed LSMR 6301.E, which is substantively identical to the Federal regulations at 30 CFR 840.11(g) and (h), includes requirements that are less stringent than sections 517(c) of SMCRA. Therefore, the Director is not approving Louisiana's proposed LSMR 6301.E regarding inspections of "abandoned sites."

The Director will, pursuant to 30 CFR 732.17(d), notify Louisiana of the regulatory changes needed for the above rule.

12. Policy Statements

(a) Policy Statement No. PS–1, Blasters Certification Requirements

In response to the required program amendments at 30 CFR 918.16(a) (1) and (2) to satisfy the blaster certification requirements of 30 CFR 918.16(a) and part 850, Louisiana proposes at LSMR 5353.C to reference Policy Statement No. PS–1. Louisiana has submitted as part of the January 19, 1990, amendment, Policy Statement No. PS1, dated June 1, 1990. In Policy Statement No. PS–1, Louisiana commits, should blasting become necessary, to develop a valid blaster certification program in accordance with 30 CFR part 850. Because of the physical nature of the unconsolidated overburden materials associated with coal and lignite in the State, Louisiana anticipates that there will be no blasting operations necessary for surface coal mining and reclamation operations permitted under LSMRA. Furthermore, until such a certification program is in place, Louisiana would recognize and accept as valid a current blaster's certification legitimately obtained from any other State regulatory authority (or the Federal government) having a blaster certification program approved under 30 CFR part 850. Based on the above, the Director finds Louisiana's proposed

LSMR 5353.C to be no less effective than 30 CFR 918.16(a) and part 850. He approves both the proposed rule at LSMR 5353.C and Policy Statement No. PS–1, dated June 1, 1990, as part of the Louisiana permanent program. Therefore, the Director is removing the required program amendments at 30 CFR 918.16(a) (1) and (2) regarding rules governing the training, examination, and certification of blasters and a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) Policy Statement No. PS–2, Violations Review Criteria for Improvidently Issued Permits

Louisiana proposes LSMR 3127 that prescribes the violations review criteria to be used in determining when a permit has been improvidently issued. The proposed rule is substantively identical to the Federal regulation at 30 CFR 773.20. However, the proposed Louisiana rule, like the Federal regulation, contains only the general procedures the regulatory authority must employ to determine whether a surface coal mining and reclamation permit was improvidently issued. The preamble to the Federal regulation notes that the regulation is written in general terms, but that the regulatory authority (which in this situation is the State of Louisiana) must set out the violations, and the penalties and fees that apply. It further specifies the minimum types of unabated violations and delinquent penalties and fees (i.e., the violations review criteria) that each regulatory program should cover (54 FR 18438, 18440, April 28, 1989). Therefore, as part of its January 19, 1990, proposed amendment, Louisiana submitted Policy Statement No. PS–2, dated June 1, 1990. Policy Statement No. PS–2 states that Louisiana will apply the violation review criteria specified in the preamble to the Federal regulation for each review of a permit believed to be improvidently issued. Based on the above, the Director finds that Louisiana's proposed LSMR 3127 is no less effective than the Federal regulation at 30 CFR 773.20. Therefore, the Director approves both LSMR 3127 and Policy Statement No. PS–2, dated June 1, 1990, as part of the Louisiana permanent program.

(c) Policy Statement No. PS–3, Clean Water Act and Water Quality Standards

Louisiana proposes LSMR 5321 requiring that "[d]ischarges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable state and federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 343." In addition, as part of its January 19, 1990, proposed amendment, Louisiana submitted Policy Statement No. PS–3, dated August 31, 1990. Policy Statement No. PS–3 states that "implementation of the Louisiana Surface Mining and Reclamation Act, and the Louisiana Surface Mining Regulations, shall in no way conflict with the Clean Water Act, and that Louisiana shall enforce its regulations in compliance with the Clean Water Act." Louisiana's proposed LSMR 5321 is substantively identical to, and no less effective than, the Federal regulation at 30 CFR 816.42, and Policy Statement No. PS–3 is consistent with LSMR 5321. Therefore, the Director approves both LSMR 5321 and Policy Statement No. PS–3, dated August 31, 1990, as part of the Louisiana permanent program.

13. 30 CFR 918.10(b). Provisions of the State Regulatory Program Affirmatively Disapproved to Comply With the Order of the District Court

In the Federal Register notice announcing the Department of the Interior's approval of Louisiana's original program, the Secretary at 30 CFR 918.10(b) affirmatively disapproved several provisions of Louisiana's program that incorporated suspended or remanded Federal regulations (45 FR 67343, October 10, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" *(In re: Permanent Surface Mining Regulation Litigation,* Civil Action 79–1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

As discussed below, the Director finds, consistent with the court decisions, that the affirmative disapprovals at 30 CFR 918.10(b) (1) through (31) are no longer necessary. The Director is taking this opportunity to remove them.

Louisiana proposes, in its January 19, 1990, amendment, recodifying and revising its permanent program rules. As discussed above, the Director is, with certain exceptions and with required revisions, approving these proposed rules. Those exceptions are discussed at finding Nos. 3(b), 10 (b), (h), (j), and (k), and (12), and do not impact the rules for which the affirmative disapprovals were written.

The Director's decision to remove the affirmative disapprovals at 30 CFR 918.10(b) (1) through (31) is consistent with the court's August 15, 1980, ruling in that (1) Louisiana's proposed permanent program rules are based on revised Federal regulations, not on the remanded 1979 language, and (2) in submitting the amendment, the head of the Louisiana regulatory authority specifically requested approval of the proposed rules.

IV. Summary and Disposition of Comments

1. Public Comments

The Director both solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director also solicited comments from various State and Federal agencies with an actual or a potential interest in the Louisiana program.

By letter dated February 21, 1990, the U.S. Soil Conservation Service (SCS) responded by notifying OSM of the draft document, "State of Louisiana Standards and Specifications for Prime Farmland Reconstruction of Mined Land," that is under consideration by SCS (administrative record No. LA–300).

By letter dated March 6, 1990, the U.S. Forest Service responded with no comments on the proposed amendment (administrative record No. LA–301).

By letter dated March 8, 1990, the U.S. Fish and Wildlife Service (FWS) responded with the following comments (administrative record No. LA–302). FWS commented that the fish and wildlife plan should be sent to the FWS

for review when the Louisiana Department of Natural Resources receives the permit application, rather than requiring that the FWS request the plan as required by Louisiana's proposed rule at LSMR 2713.C. Louisiana's proposed LSMR 2713.C is substantively identical to the Federal regulation at 30 CFR 780.16(c), which requires that the regulatory authority provide the resource information to FWS within 10 days of receipt of the request from the FWS. Therefore, the Director is not requiring Louisiana to revise its program in response to this comment.

FWS also commented that Louisiana should retain the existing rule at LSMR 5327.B(2) which requires that all drainage pass through a siltation structure before leaving the permit area. Louisiana proposes to delete existing LSMR 5327.B(2). Louisiana's existing LSMR 5327.B(2) is substantively identical to the Federal regulation at 30 CFR 816.46(b)(2). OSM suspended 30 CFR 816.46(b)(2) in response to the court decision, PSMRL II. Round II, that remanded this regulation. OSM suspended paragraph (b)(2) because the use of sediment ponds and other siltation structures does not necessarily constitute use of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area 51 FR 41952, 41957, November 20, 1986; also see finding No. 6 for a discussion of the Director's approval of Louisiana's proposed deletion of existing LSMR 5327.B(2). Because Louisiana's proposal to delete LSMR 5327.B(2) is consistent with OSM's suspension of 30 CFR 86.46(b)(2), the Director has determined that at this time, no further action is required with regard to this comment.

By letter dated April 13, 1990, the U.S. National Park Service (NPS) responded by saying that the amendment adequately addresses NPS programs (administrative record No. LA–303).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated February 8, 1990, OSM requested EPA's concurrence (administrative record No. LA–298).

By letter dated June 20, 1990, OSM received from the EPA concurrence for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act (administrative record No. LA–306). However, EPA qualified its concurrence to the extent that Louisiana's rules should not be interpreted so as to provide full authorization for instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards as required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States obtain a permit as appropriate under either section 402 or 404 of the Clean Water Act.

The Director acknowledges that nothing in SMCRA supersedes the requirements of the Clean Water Act: The Director's approval of Louisiana's proposed rules should not be construed to authorize any actions inconsistent with the Clean Water Act. Additionally, Louisiana submitted to OSM Policy Statement No. PS–3, dated August 31, 1990, stating that "implementation of the Louisiana Surface Mining and Reclamation Act, and the Louisiana Surface Mining Regulations, shall in no way conflict with the Clean Water Act, and that Louisiana shall enforce its regulations in compliance with the Clean Water Act" (administrative record No. LA–308). The Director is approving this policy statement as part of the Louisiana permanent program (see finding No. 13(c)).

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. By letters dated February 8, 1990, comments were solicited from these offices (administrative record No. LA–297). No comments were received from the SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and with additional requirements, the proposed amendment submitted to OSM by Louisiana on January 19, 1990, and revised on August 14 and September 7, 1990.

The exceptions are (1) LSMR 107.G, termination of jurisdiction; (2) LSMR 53123.A.4, sample adequacy for cover, production, and/or woody plant densities; (3) 53123.B.9, ground cover for undeveloped land; (4) LSMR 53125.C, success standards on mined lands reclaimed for wildlife management, recreation, and shelterbelts; (5) LSMR 53125.C.3.b, evaluation of diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land; and (6) LSMR 6301.E, abandoned sites.

As discussed in finding No. 3(b), the Director is not approving but is deferring his decision on LSMR 107.G, termination of jurisdiction.

As discussed in finding No. 11, the Director has determined that proposed LSMR 6301.E is less stringent than SMCRA. He is not approving it.

As discussed in finding Nos. 10 (b), (h), (j), and (k), the Director has determined that proposed LSMR 53123.A.4, 53123.B.9, 53125.C, and 53125.C.3.b are less effective than the Federal regulations and/or less stringent than SMCRA. He is not approving them and he is requiring further regulatory program amendments.

In addition, as discussed in findings Nos. 4, and 10 (a), (d), (e), and (f), the Director is requiring that Louisiana amend (1) LSMR 2523, determination of probable hydrologic consequences; (2) LSMR 53123.A.1, 2, and 3, statistically valid sampling techniques for estimating ground cover, productivity, and live stems per acre; (3) LSMR 53123.B.1.b and

c, 53123.B.2.b and c, and 53123.B.3.b and c, use of productivity and ground cover success standards on pasture land, grazing land, and cropland; (4) LSMR 53123.B.2.a, use of weighted average comparisons for reference areas to determine the revegetation success on grazing land; and (5) LSMR 53125.B.3, statistically valid sampling techniques for the determination of success of stocking and ground cover on commercial forest lands.

The Director is also, as explained in finding Nos. 12 and 13, (1) approving the policy statements, Nos. PS–1, 2, and 3, regarding blasters certification, improvidently issued permits, and the Clean Water Act, as part of the approved permanent program, (2) removing the required amendments at 30 CFR 918.16(a) (1) and (2) regarding blaster certification, and (3) removing the affirmative disapprovals at 30 CFR 918.10(b)(1)–(31).

Except as noted, the Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public. However, the Director reserves the right to require further changes to these rules in the future as a result of Federal regulatory revisions, court decision, and OSM's continuing oversight of the Louisiana program.

The Federal regulations at 30 CFR 918 which codify all decisions concerning the Louisiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that alteration of an approved program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Louisiana program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Louisiana of only such provisions.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, the action this notice describes is exempt both from regulatory review by OMB and from the requirement to prepare a regulatory impact analysis.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities, nor will it impose any new requirements; rather, the rule will ensure that existing requirements established by SMCRA and its implementing Federal regulations will be met by the State of Louisiana.

3. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 29, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations, is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for part 918 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.10 is revised to read as follows:

§ 918.10 State regulatory program approval.

The Louisiana permanent regulatory program, as submitted on January 3, 1980, and resubmitted on September 4, 1980, is approved effective October 10, 1980. Copies of the approved program are available at:

(a) Department of Natural Resources, Office of Conservation, 625 N. 4th Street, Baton Rouge, Louisiana 70804, Telephone: (504) 342–5515.

(b) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 500 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

3. Section 918.15 is added to read as follows:

§ 918.15 Approval of amendments to State regulatory program.

With the exceptions of Louisiana Surface Mining Regulations (LSMR) 107.G, termination of jurisdiction; 53123.A.4, sample adequacy for cover, production, and/or woody plant densities; 53123.B.9, ground cover for undeveloped land; 53125.C, success standards on mined lands reclaimed for wildlife management, recreation, and shelterbelts; 53125.C.3.b, evaluation of diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land; and 6301.E, abandoned sites; revisions to the following chapters of LSMR submitted to OSM on January 19, 1990, as revised by Louisiana on August 14 and September 7, 1990, are approved May 8, 1991:

(a) Chapter 1, general—definitions; Chapter 11, areas where mining is prohibited or limited; Chapters 13 and 15, areas designated unsuitable for surface coal mining; Chapters 17 and 19, requirements for permit applications; Chapter 21, requirements for coal exploration; Chapter 23, requirements for legal, financial, and compliance information; Chapter 25, requirements for information on environmental resources; Chapter 27, requirements for reclamation and operations plans; Chapter 29, requirements for permits for special categories of mining; Chapter 31, public participation, approval of applications, and permit terms and conditions; Chapter 35, permit revisions, renewals, and transfer, sale, and assignment of permit rights; Chapter 37, small operator assistance; Chapters 39, 41, 43, 45, and 47, bonding and insurance requirements; Chapters 51, 53, 55, and 59, permanent program performance standards; Chapter 63, inspections; Chapter 65, enforcement; and Chapter 69, civil penalties.

(b) In addition the policy statements, PS–1, PS–2, and PS–3, submitted by

Louisiana on August 14, 1990, as part of its January 19, 1990, amendment regarding, respectively, blasters certification requirements at LSMR 5353.C, violations review criteria for improvidently issued permits at LSMR 3127, and enforcement of water quality standards at LSMR 5321, are approved as part of the Louisiana permanent program.

4. Section 918.16 is amended by revising paragraph (a) and adding new paragraphs (b) through (i) to read as follows:

§ 918.16 Required program amendments.

* * * * *

(a) By September 5, 1991, Louisiana must submit as a program amendment a policy statement interpreting LSMR 2523 regarding "spatial" or "temporal" determinations of probable hydrologic consequences.

(b) By September 5, 1991, Louisiana must submit as a program amendment detailed descriptions of the statistically valid sampling techniques it proposes for estimating ground cover, productivity, and live stems per acre at LSMR 53123.A. 1, 2, and 3.

(c) By September 5, 1991, Louisiana must submit as a program amendment:

(1) Removal of the statement "[m]aximum sample size shall be 30" and

(2) Clarification that sample adequacy must be met for ground cover, productivity, and/or woody plant densities at LSMR 53123.A.4.

(d) By September 5, 1991, Louisiana must submit as a program amendment the technical documents and historical records it would allow for determining the success of ground cover and productivity on mined lands reclaimed for pasture land, grazing land, and cropland at LSMR 53123.B.1. b and c, 53123.B.2. b and c, and 53123.B.3. b and c.

(e) By September 5, 1991, Louisiana must submit as a program amendment a detailed description of what is meant by "weighted average comparisons" when using reference areas to determine the success of revegetation on mined lands reclaimed for grazing land at LSMR 53123.B.2.a.

(f) By September 5, 1991, Louisiana must submit as a program amendment a detailed description of the statistically valid sampling techniques it would allow for the determination of the success of stocking and ground cover on mined lands reclaimed for commercial forest land at LSMR 53125.B.3.

(g) By September 5, 1991, Louisiana must submit as a program amendment removal of the performance standard for vegetative ground cover on undeveloped land at LSMR 53123.B.9.

(h) By September 5, 1991, Louisiana must submit as a program amendment the requirement for permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries prior to use of the performance standards at LSMR 53125.C on mined lands reclaimed for wildlife management, recreation, shelterbelts, and forest uses other than commercial forest land.

(i) By September 5, 1991, Louisiana must submit as a program amendment:

(1) Removal of the phrase "on the basis of results which could reasonably be expected" and

(2) A description of the means by which it will evaluate diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land at LSMR 53125.C.3.b.

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30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its approval, with certain exceptions and additional requirements, of proposed amendments to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments, which pertain to Missouri's bonding program, are intended to revise the State program to be consistent with the corresponding Federal regulations and restore the solvency of the State's alternative bonding system.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, Missouri 64105; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. The Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the November 21, 1980, Federal Register (45 FR 77017). Actions taken subsequent to approval are found in 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of Amendments

OSM has reviewed the proposed amendments submitted by Missouri that address its bonding program. They include submittals of March 18, 1988 (Administrative Record No. MO-371), July 8, 1988 (Administrative Record No. MO-388), and January 12, 1989 (Administrative Record No. MO-410). The submittals are in response to 30 CFR part 732 notifications from the Director to the State dated June 11, 1986, and January 30, 1986 (Administrative Record Nos. MO-295 and MO-351). To provide clarity and continuity to the review and decision process, the Director is combining these proposed statutory and regulatory changes all of which concern bonding, into one rulemaking.

The Missouri statute and regulations addressed in each of the three proposed amendments and OSM actions taken are as follows:

The March 18, 1988, submittal proposed revisions to 10 CSR 40-7.011(2)(D), Amount of Bond per Permitted Areas; 10 CSR 40-7.011(2)(E), Amount of Bond on Coal Preparation Areas; and 10 CSR 40-7.011(2)(F), Minimum Bond for a Single Mine. OSM announced receipt of this proposed amendment in the May 3, 1988, Federal Register (53 FR 15702) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the amendment's substantive adequacy. The comment period closed June 2, 1988. No public hearing was requested or held. By letter dated August 18, 1989, OSM notified Missouri of concerns it had with regard to its proposed regulation at 10 CSR 40-7.011(2)(F), that placed a $10,000 bond minimum for each individual operation rather than each individual permit. Missouri responded to OSM's concern by letter dated August 30, 1988, and informed OSM that it would address the concern in a future rulemaking (Administrative Record No. MO-470).

The July 8, 1988, submittal proposed revisions to the Revised Statutes of Missouri (RSMo) at section 444.805, Definitions; section 444.830, General

Bonding Requirements; section 444.950.1, Phase I Reclamation Bond; section 444.960.1, Establishment of the Land Reclamation Fund; and section 444.965.1, Fee Assessment of the Land Reclamation Fund. OSM announced receipt of the proposed amendment in the August 12, 1988, **Federal Register** (53 FR 30449) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the amendment's substantive adequacy. The comment period closed on September 12, 1988. No public hearing was requested or held. By letter dated November 29, 1988, OSM notified Missouri of concerns it had with regard to RSMo 444.805 and its definition of "Phase I reclamation" (Administrative Record No. MO–427). By letter dated December 30, 1988, Missouri replied to OSM's concern by stating its position that the Phase I reclamation definition was as stringent as SMCRA (Administrative Record No. MO–411).

The January 12, 1989, submittal proposed revisions to the Missouri regulations at 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.031, Permit Suspension or Revocation, Bond Forfeiture, and Authorization to Expend Reclamation Fund Monies; and, 10 CSR 40–7.041, Form and Administration of the Coal Mine Land Reclamation (CMLR) Fund. OSM announced receipt of the proposed amendment in the February 10, 1989, **Federal Register** (54 FR 6423), and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the amendment's substantive adequacy. The comment period closed on March 13, 1989. No public hearing was requested or held. On June 5, 1989, OSM notified Missouri of concerns it had with regard to proposed regulations at 10 CSR 40–7.011(5), Self Bonding; 10 CSR 40–7.021(2) (A) and (B), Criteria and Schedule for Release of Reclamation Liability; and, 10 CSR 40–7, the General Bonding Program (Administrative Record No. MO–441).

By letter dated July 19, 1989, Missouri provided an overall explanation of its bonding program and also offered to meet with OSM to explain its program in detail (Administrative Record No. MO–448). This resulted in an October 5, 1989, public meeting held at the OSM office in Denver, Colorado. The meeting discussions are recorded in an October 26, 1989, letter to Missouri (Administrative Record No. MO–480). Missouri responded to questions raised at that meeting by letter dated November 9, 1989 (Administrative Record No. MO–447). OSM announced receipt of the material and reopened the public comment period until April 6, 1990 (55 FR 10632, March 22, 1990). No public hearing was requested or held.

OSM then identified additional concerns relating to the fixed rate Phase I bond amounts, the past bond forfeiture reclamation responsibility, and the CMLR Fund solvency. These concerns were conveyed to Missouri by OSM in a letter dated July 3, 1990 (Administrative Record No. MO–499). At Missouri's request, OSM held a public meeting on August 7, 1990, to allow Missouri to respond to the concerns (Administrative Record No. MO–512). OSM then published a notice in the August 23, 1990, **Federal Register** (55 FR 34578) inviting public comment on the additional information provided by Missouri at the meeting. The public comment period closed on September 7, 1990. No public comments were received.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that, with the exception of the provisions discussed below, the proposed bonding provisions contained in the amendments submitted by Missouri on March 18, 1988, July 8, 1988, and January 12, 1989, can meet the requirements of SMCRA and 30 CFR chapter VII.

A. General Findings

The Director approved an alternative bonding program for the State of Missouri in the May 8, 1984, **Federal Register** (49 FR 19468). As a condition of that approval and as part of OSM's oversight of the Missouri program, the Director required that Missouri provide periodic reports, not less than annually, to evaluate the adequacy of the CMLR Fund. This was to insure that sufficient resources were available to complete the reclamation plan for any areas that might be in default on reclamation obligations at any time pursuant to requirements of the Federal regulations at 30 CFR 800.11(e)(1).

In conjunction with the above, the Director encouraged and expected Missouri, pursuant to RSMo 444.830 and the Missouri Code of State Regulations (CSR) at 10 CSR 40–7.010(8), to review the program frequently and make any adjustments as necessary to assure adequacy of the Fund, May 8, 1984, **Federal Register** (49 FR 19468, 19470).

In its October 30, 1985, CMLR Fund evaluation report, Missouri notified OSM that the reclamation costs for mines that had failed in the State as well as costs for anticipated failures in the near future, would exceed the resources of the Fund, assuming reclamation were to be accomplished in a timely manner (Administrative Record No. MO–352).

On January 30, 1986, on the basis of that report, and pursuant to 30 CFR 732.17(e), OSM notified Missouri that it must: (1) Address the adequacy of the alternative bonding system (ABS), and (2) outline plans to reclaim the backlog of forfeiture sites (Administrative Record No. MO–351). OSM's letter indicated that Missouri no longer met the requirement of 30 CFR 800.11(e)(1) that each ABS "assure that the regulatory authority will have sufficient resources to complete the reclamation plan for any areas which may be in default at any time."

Missouri subsequently initiated a review and evaluation of its bonding program. The proposed State program changes evaluated in this finding document represent Missouri's actions resulting from that review. In addition to the proposed amendments being acted upon herein, Missouri has previously submitted amendments that were in partial response to OSM's January 30, 1986, letter. They are as follows:

Missouri enacted statutory and regulatory changes that increased the required Phase I performance bond amount from $500 per acre to $2,500 per acre and increased the ceiling of the CMLR Fund from $3 million to $7 million. OSM approved this amendment as an adequate partial response to its January 30, 1986, letter in the February 26, 1988, **Federal Register** (53 FR 5766).

Missouri then enacted additional changes that increased the performance bonding amount from $2,500 per acre to $10,000 per acre for coal preparation areas. OSM approved this amendment as an adequate partial response to its January 30, 1986, letter in the October 31, 1988, **Federal Register** (53 FR 43866).

The proposed amendments now before OSM provide additional modifications to the Missouri program and represent a major redrafting of Missouri's bonding statutes and regulations. As now proposed, Missouri's statutes and regulations would offer a permittee the option of either posting a full-cost conventional bond or participating in the ABS. The ABS would require a permittee to provide a conventional bond of $2,500 per permitted acre (referred to as a Phase I reclamation bond) to guarantee satisfactory completion of Phase I reclamation. In addition, the permittee would have to pay an assessment based on coal tonnage production, into the CMLR Fund. The Fund would serve as

the bonding mechanism for Phase II and III reclamation liabilities.

Missouri is also proposing changes to its bonding program that would involve modification of the CMLR Fund (1) to provide money to cover only part of the cost of reclaiming sites that were in bond forfeiture prior to September 1, 1988; (2) to increase the future CMLR Fund balance; (3) to impose special bonding requirements for operators of small mines; and (4) to provide additional mechanisms and requirements for self-bonding.

As previously noted, the proposals being addressed in this notice combine several amendment submittals that Missouri provided in response to OSM's January 30, 1986, letter sent pursuant to 30 CFR 732.17(e). In this rulemaking notice, the Director has identified numerous concerns that still exist with Missouri's ABS and its ability to continue to operate in an administratively effective and solvent manner consistent with the Federal requirement at 30 CFR 800.11(e).

Under the Federal regulation at 30 CFR 800.11(e), an ABS must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. The ABS must meet these requirements at all times. A proposed ABS or a proposed amendment to an ABS may initially appear sound, logical and capable of meeting the requirements of 30 CFR 800.11(e) and fulfilling the objectives and purposes of section 509 of SMCRA. However, in practice, the ABS may not perform as initially assumed for a variety of reasons. Yet its obligations remain under 30 CFR 800.11(e). The Missouri ABS has experienced an unexpectedly large default. The issue before the Director is whether the new proposed income provisions, structure and coverage meets and will continue to meet the requirements of 30 CFR 800.11(e).

Under 30 CFR 732.16, the Director may establish terms or conditions for the implementation, administration and operation of a State program. As a result, the Director has decided to approve only parts of Missouri's proposed revisions to its ABS, and then only with certain conditions intended to assure that the revisions meet the regulatory requirements of 30 CFR 800.11(e) in generating sufficient income in a timely manner to reclaim any defaulted acreage. In responding to these conditions and required amendments, Missouri needs to consider the factors identified in OSM's November 1990 study on alternative bonding systems entitled "An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems."

B. Findings on Statutory Amendments

1. RSMo 444.805—Definitions

Missouri proposes to recodify this section, delete the definition of "pit reclamation", and add three new definitions: "full-cost bond," "Phase I reclamation" and "Phase I reclamation bond."

(a) *Full-Cost Bonds.* Missouri would define "full-cost bond" at subsection (8) to mean:

> A bond for performance filed by a permittee pursuant to section 444.830 payable to the [Land Reclamation] commission [LRC] and conditional upon faithful performance of all the requirements of this law and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. The amount of the bond required shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology and revegetation potential and shall be determined by the [LRC]. The amount of bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the [LRC] in the event of forfeiture.

The requirements of this definition are substantively identical to those at section 509(a) of SMCRA pertaining to performance bonds. While Missouri elected to use "full-cost bond," instead of "performance bond," the Director finds that Missouri's definition of the term "full-cost bond" is no less stringent than the requirements of SMCRA for performance bonds at section 509(a). The Director is therefore approving Missouri's proposed definition.

(b) *Pit Reclamation/Phase I Reclamation.* Missouri proposes to delete the term "pit reclamation" previously defined at subsection (12), as this term is no longer used in the revised statute. The State would replace this term with the new term "Phase I reclamation" at subsection (15), which is defined as "the filling and grading of all areas disturbed in the conduct of surface coal mining operations, including the replacement of topsoil and initial seeding." SMCRA does not provide a definition for "Phase I reclamation," however, section 519(c) provides a three-step bond release schedule. The first step requires the operator to complete the backfilling, regrading, and drainage control in accordance with the approved reclamation plan. The Federal regulation that implements this SMCRA provision is 30 CFR 800.40(c)(1). In that regulation, the term "Phase I reclamation" is used to describe the completion of backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan. Missouri's proposed definition of Phase I reclamation differs from the Federal standard in that it would require the replacement of topsoil (this is optional in the Federal definition), but would not provide for a drainage control requirement.

In a letter dated November 29, 1988, (Administrative Record No. MO–427), OSM notified Missouri of its concern that Missouri's definition of Phase I reclamation did not include drainage control requirements. Missouri's reply to this letter on December 30, 1988 (Administrative Record No. MO–411), included a discussion in support of its omission of the requirement. The State contended that the following provisions of its regulations would assure that drainage control would be in place prior to Phase I bond release: (1) 10 CSR 40–3.040(2)(A) 1 and 5 requiring that sediment ponds and other treatment facilities be established prior to disturbance and maintained until the disturbed area has been restored and revegetation requirements have been met; (2) 10 CSR 40–7.021(2)(A) 1 and 10 CSR 40–7.021(2)(C) that prohibits Phase I or II bond release for temporary structures such as sedimentation ponds and diversions; and (3) 10 CSR 40–7.021(2)(B) requiring that vegetation be sufficient to control erosion or sediment to obtain a Phase II bond release. While the above State regulations assure sedimentation control aspects of "drainage control," they do not address other drainage control elements such as restoration of the area to approximate original contour with reconstructed drainage on the reclaimed area that is designed for stability and erosion control. The term "drainage control" implies an all inclusive requirement that such control must be in place prior to Phase I bond release. The Director finds that without the requirement for "drainage control" as a Phase I bond release criteria, the Missouri program is less stringent than the Federal program requirements.

In an October 10, 1990, submittal to OSM, Missouri has proposed changes to its regulations that address this issue. The Director is therefore deferring his decision on this issue to that future rulemaking action.

(c) *Phase I Reclamation Bond.* At newly codified subsection (16), Missouri

defines the new term "Phase I reclamation bond" to mean "a bond for performance filed by a permittee pursuant to RSMo 444.950 that may be released upon the successful completion of phase I reclamation of a permit area in accordance with the approved reclamation plan." There is no Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding, the Director finds that this definition is not inconsistent with Federal program requirements. Therefore, the Director is approving Missouri's proposed definition.

2. RSMo 444.830—Bonding Requirements

At section 444.830.1, Missouri proposes to allow an applicant the option of (1) filing a full-cost bond and paying a one-time assessment to the CMLR Fund (the one-time assessment would only be required until September 1, 1993; after this date, permittees filing full-cost bonds would be exempt from any payments to the CMLR Fund), or (2) filing a Phase I bond and complying with the Fund assessment requirements under the ABS. Section 509(c) of SMCRA allows a State flexibility, upon the approval of the Secretary, to adopt an ABS, provided the alternative system will achieve the objectives and purposes of the bonding program pursuant to section 509 of SMCRA. SMCRA does allow both full-cost bond and an ABS; however, the Missouri proposal initially requires a mandatory participation in the ABS unless an applicant who chooses the full-cost bond contributes money to the ABS until September 1, 1993. After that date a nonrestrictive option with regard to participation in one of the two systems would be allowed. Such an option can be approved only if the ABS is demonstrated to be sufficiently solvent in accordance with the implementing Federal regulations for approving an ABS at 30 CFR 800.11(e). The State of Missouri has not made this demonstration. Therefore the Director is not approving the proposed nonmandatory participation option at section 444.830.1 concerning full-cost bond versus the ABS and is requiring Missouri to amend its program to remove this provision or to make a demonstration that the ABS will be solvent consistent with the requirements of 30 CFR 800.11(e).

3. RSMo 444.950—Phase I Reclamation Alternative Bond

(a) *General.* At section 444.950.1, Missouri is replacing the concept of pit reclamation with Phase I reclamation (as discussed in Finding B.1.(b) of this notice) and is proposing to revise this section accordingly to set forth the requirements for filing a Phase I bond. Missouri proposes to set a fixed Phase I bond amount of $2,500 per permitted acre, except that the bond amount would be $10,000 per acre for coal preparation areas. In no case would the Phase I reclamation bond be less than $10,000 per permitted surface coal mine operation. In addition those operations with less than 1,000 bonded acres would be required to post a minimum bond amount equivalent to 20 acres of Phase I bond ($50,000) for each acre of open pit. Missouri would define an open pit as the area between the crest of the highwall to the toe of the spoil.

OSM previously approved the $2,500 per acre Phase I bond amount in the February 26, 1988, **Federal Register** (53 FR 5766), and the $10,000 per acre bond requirement for coal preparation acreas in the October 31, 1988, **Federal Register** (53 FR 43866). Both approvals were considered to be adequate partial responses to OSM's January 30, 1986, 30 CFR part 732 notification to Missouri. At the time of OSM's approvals of the $2,500 and $10,000 bond amounts, the Phase I bonds were supplemented by the CMLR Fund to assure completed reclamation; that is, if the bond amounts were inadequate to complete Phase I reclamation, Missouri could use money from the CMLR Fund to complete required reclamation.

The proposed amendment now before OSM would separate the CMLR Fund from the Phase I reclamation obligations, that is, the Phase I reclamation obligation are distinct and act as a conventional bonding system. Therefore, should the forfeited Phase I bond amounts prove insufficient to cover reclamation costs, no other funds nor the CMLR Fund would be available to complete the remaining Phase I reclamation liability. The new Missouri scheme proposes to set a flat bonding rate of $2,500 per permitted acre ($10,000 per acre for coal preparation areas) to cover Phase I reclamation liability.

With Missouri's introduction of the full-cost bond option and other modifications to its bonding program in the amendments now before OSM, the Director is revisiting the previous approval actions in order to insure that Missouri's program, when considered as a whole, will meet the criteria set forth in the implementing Federal regulations at 30 CFR 800.11(e) for approval of an ABS.

(i) $2,500 Fixed Rate Phase I Reclamation Bond Amount. The Federal regulations at 30 CFR 800.11 implement the authority given the Secretary to approve an ABS per section 509(c) of SMCRA. 30 CFR 800.11(e)(1) requires that the regulatory authority have available sufficient money to complete the reclamation plan for any area which may be in default at any time. Missouri did not provide any documentation to support a $2,500 fixed rate bond as being adequate to complete Phase I reclamation liabilities. Therefore, OSM conducted an analysis to determine whether, in the event of bond forfeiture, the Phase I reclamation plan could be achieved. The analysis demonstrated that the $2,500 per acre Phase I reclamation bond would not be sufficient to reclaim all sites under all forfeiture scenarios, particularly for operations of 100 or more acres with mining at overburden depths of 60 feet or greater (Administrative Record No. MO–499). A fixed rate also would not provide the State the necessary flexibility to adjust for changes in the cost of future reclamation, a component essential to ensure the Fund's solvency and hence its ability to meet the criteria of 30 CFR 800.11(e).

Missouri's statute would prohibit the expenditure of CMLR Fund money for any aspect of the proposed alternative bonding system's Phase I reclamation liability. This means that to achieve the objectives and purposes of the bonding program as required by section 509(c) of SMCRA, an operator's Phase I reclamation bond has to be sufficient to cover all required Phase I reclamation costs since there is no other source of funds to do so. To the extent that Missouri did not demonstrate and OSM did not find (1) that the separation of the liability of the CMLR Fund from the Phase I bonded areas would provide sufficient reclamation money to satisfy the requirements of 30 CFR 800.11(e), (2) that a fixed-rate Phase I reclamation bond of $2,500 per acre is sufficient to reclaim all bond forfeiture scenarios, and (3) that the State does not have the necessary flexibility to adjust the bond amount in the event that the cost of reclamation changes, the Director finds that Missouri's proposed changes are not in accordance with the requirements of section 509 of SMCRA. For these reasons, the Director is not approving the proposed language and is requiring Missouri to amend its program to provide that: (1) The amount of Phase I reclamation bond is sufficient to assure completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture; and (2) the amount of the Phase I reclamation bond can be

adjusted from time to time as the cost of reclamation changes.

(ii) $10,000 Fixed Rate Coal Preparation Area Bond. Since the October 31, 1988, approval of Missouri's $10,000 per acre bond requirement for coal preparation areas, Missouri has reclaimed various preparation plant sites through its abandoned mine land reclamation program. Reclamation costs for these sites have averaged $13,000 per acre, with a range of $7,300 to $24,000 per acre. These data demonstrate that, since the CMLR funds cannot be used for Phase I reclamation, Missouri's fixed bond rate of $10,000 per acre for coal preparation areas is not sufficient to cover the cost of reclamation in every case of bond forfeiture (Administrative Record No. MO–499). Accordingly, the Director finds that, for the reasons set forth in the previous finding, Missouri's proposed changes are not in accordance with the Federal regulations at 30 CFR 800.11(e)(1) that an ABS ensure that the regulatory authority will have available sufficient money to complete the reclamation plan for any area which may be in default at any time. Therefore, the Director is not approving Missouri's proposed $10,000 per acre coal preparation area bond and is requiring Missouri to amend its program to assure that sufficient bond will be available to complete the required reclamation on coal preparation areas in the event of bond forfeiture.

(iii) Open Pit Bond. Missouri proposes an exception to the $10,000 minimum bonding requirement for those operations with less than 1,000 bonded acres by proposing that the minimum bond on such operations be the equivalent of 20 acres of Phase I bond at $2,500 per acre for each acre of open pit as determined by the approved mining plan (or stated differently, $50,000 per acre for each acre of open pit). An open pit would be the area between the crest of the highwall and the toe of the spoil. Missouri did not provide any documentation to demonstrate that the open pit bond would be adequate. OSM has determined that in some cases this open pit minimum bond would be adequate to assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any area which may be in default at any time under the requirement of 30 CFR 800.11(e)(1). However, OSM has been unsuccessful in determining that Missouri's proposed open pit minimum bond would be sufficient to assure the completion of the reclamation plan in all cases. For example, OSM determined that while the bond is based on the number of open pit acres identified in the approved mining plan, there is no definite relationship between the number of open pit acres and the acres of land actually disturbed or the actual costs of reclamation. Accordingly, a predetermined open pit bond amount may often not be sufficient to assure funding of the required reclamation work. Further, the size of the open pit is a flexible aspect of the mining plan and the actual on-the-ground operation. Because of this flexibility, the total amount of bond posted for an operation could constantly be in flux, making it uncertain how the required amount of bond would be determined and whether the actual amount of available bond money would be sufficient to cover actual reclamation costs. Therefore, Missouri's proposed open pit minimum bond does not assure that sufficient bond money would be available to complete the required reclamation in the event of bond forfeiture. The Director finds that Missouri's proposal is not in accordance with section 509 of SMCRA and is not approving the proposed requirement. Accordingly, the Director is requiring Missouri to: (1) Demonstrate that its open pit minimum bond will be sufficient to assure the completion of the required Phase I reclamation; or (2) amend its program to provide an amount that assures Phase I reclamation requirements can be met.

(b) *Liability Period.* At section 444.950.2, Missouri proposes language that would require the Phase I reclamation bond to be executed by the operator and a corporate surety licensed to do business in the State, and also would allow the operator the option to deposit cash, irrevocable letters of credit, negotiable bonds of the United States Government or of the State of Missouri, or negotiable certificates of deposit of any bank organized or transacting business in the United States, so long as the cash deposit or market value of such securities are equal to or greater than the amount of the required bond. Under Missouri's proposed ABS, the operator's responsibility for bond coverage is limited to Phase I reclamation only. At section 444.950.4, Missouri would require that liability under the proposed Phase I reclamation bond continue until the LRC determines that Phase I reclamation has been completed. The proposed CMLR Fund is established to provide for the reclamation bond coverage of only Phases II and III. While the operator is not directly responsible for total bond coverage, the combination of the Phase I bond and the CMLR Fund's coverage of Phases II and III reclamation does insure that a bond liability will exist for the duration of mining, reclamation and revegetation.

Therefore, the Director finds that Missouri's proposed requirements at RSMo 444.950.2 requiring the operator to post a Phase I bond in combination with the bonding liabilities of the CMLR Fund, is not inconsistent with the objectives and purposes of section 509(b) of SMCRA or the requirement of 30 CFR 800.11(e)(1) that the regulatory authority have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Therefore, the Director is approving Missouri's proposed combination bond liability between the operators Phase I reclamation bond and the CMLR Fund bond liability pending a showing by Missouri that the proposed Phase I reclamation bonding amounts assure adequate bond coverage for the Phase I reclamation and that the CMLR Fund meets the requirements of 30 CFR 800.11(e) and is maintained to cover the potential liability of the Phase II and III reclamation cost as discussed in other parts of this notice.

(c) *Self-Bonding.* At section 444.950.3, Missouri proposes to allow its LRC to accept the bond of an applicant without separate surety when the applicant demonstrates to the satisfaction of the LRC the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self insure or bond the required amount. Missouri's proposed language is substantively identical to the Federal counterpart in section 509(c) of SMCRA. However, before Missouri can implement the self-bonding statutory provisions it must submit and obtain OSM approval of counterpart self-bonding requirements to the Federal regulations at 30 CFR 800.23. Missouri has provided these proposed regulations at 10 CSR 40–7.011(5)(D). They are discussed at finding C.1.(e)(iii) of this notice. With the exception for the need of several further amendment actions, the Director finds that Missouri's proposed self-bonding regulations as proposed are no less effective than the Federal regulation requirements on self-bonding. Therefore, the Director finds that Missouri's proposed statutory requirements proposed here, in combination with its proposed self-bonding regulations, are no less stringent than and no less effective than the applicable Federal requirements. Accordingly, the Director is approving Missouri's proposed self-bonding requirements at RSMo 444.950.3.

(d) *Bond Alternatives.* Within this same statutory section, at 444.950.3,

Missouri also provides that, in lieu of the establishment of a bonding program as set forth in section 444.960, the LRC may adopt an alternative system that will achieve the objectives and purposes of the bonding program pursuant to section 444.960. Section 509(c) of SMCRA provides (in part) that, in lieu of the establishment of a bonding program as set forth in section 509, the Secretary may approve, as part of a State program, an alternative system that will achieve the objectives and purposes of the bonding program pursuant to section 509 of SMCRA. As proposed, the Missouri statute does not require that the LRC obtain the Secretary's approval before adopting an alternative bonding system.

Since section 509(c) of SMCRA reserves the authority for approval of such systems to the Secretary, the Director is not approving this provision of the Missouri statute to the extent that it could be interpreted as allowing the State to adopt such systems without prior Secretarial approval. The Director is requiring that the State either delete this provision and an identical one at RSMo 444.830.3 or modify both to require Secretarial approval.

(e) *Miscellaneous.* At section 444.950.4, Missouri proposes to replace the terms "bond" and "pit reclamation," with "Phase I reclamation bond" and "Phase I reclamation" respectively. Since these proposed changes provide internal consistency in the Missouri statute, the Director is approving them subject to Missouri demonstrating that its ABS will met the requirements of 30 CFR 800.11(e).

4. RSMo 444.960—Coal Mine Land Reclamation Fund

(a) *Establishment of the Coal Mine Land Reclamation Fund—General.* At section 444.960.1, Missouri proposes to establish the Coal Mine Land Reclamation Fund (CMLR Fund) as a part of its ABS. At section 444.960.5, Missouri proposes that after September 1, 1988, all moneys paid into the CMLR Fund be allocated so that 40 percent of the assessments would be used for reclaiming permits revoked by the LRC prior to September 1, 1988 (Fund A), and 60 percent of the assessments would apply to reclamation of permits revoked by the LRC after September 1, 1988 (Fund B). Moneys that existed in the CMLR Fund as of September 1, 1988, would be allocated to Fund A. All moneys assessed after September 1, 1993, would be allocated to Fund B. Fund A moneys would be used on any aspect of reclamation, while Fund B moneys would only be used for Phase II and III reclamation.

As previously discussed, in its October 30, 1985, CMLR Fund evaluation report, Missouri notified the Director that, assuming reclamation were to be accomplished in a timely manner, reclamation costs for mines that had failed in the State as well as costs for anticipated failures in the near future, would exceed the resources of the CMLR Fund. A total of seven failed mining operations resulted in permit revocation and bond forfeiture for some 3,154 acres. Of this acreage, only 793.4 acres have been reclaimed or rebonded, leaving a balance of 2,360.6 forfeited and unreclaimed acres.

(i) Fund A. Missouri established Fund A in response to the Director's January 30, 1986, letter that required the State to outline plans to reclaim the backlog of forfeited sites. The proposed fee structure of Fund A would have the potential to add an estimated $400,000 toward the reclamation of these sites compared to the amount of funds generated by the current ABS. However, OSM analyses suggest that a shortfall ranging from approximately $550,000 to $2.5 million may still exist in assuring full and timely reclamation of the forfeited sites (Administrative Record Nos. MO–480 and MO–512).

Section 509(c) of SMCRA provides that "in lieu of the establishment of a bonding program, as set forth in this section, the Secretary may approve * * * an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section." As stated in section 509(a) of SMCRA, one of the key objectives and purposes of the bonding program is "to assure the completion of the reclamation plan if the work ha[s] to be performed by the regulatory authority in the event of forfeiture * * *." In furtherance of this objective, 30 CFR 800.11(e)(1) provides, in pertinent part, that OSM may approve an ABS if the alternative assures that "the regulatory authority will have available sufficient money to complete the reclamation plan for *any* areas which may be in default at *any* time" (emphasis added).

Reclamation liability under a bond pool must be continuous. The liability and obligation of an ABS does not disappear if the bond pool finds itself unable to meet its obligations as they mature, or its existing capital structure is impaired or its ability to perform any of its obligations is impaired. Additionally, existing liabilities of an impaired pool cannot be erased simply because proposed modifications to the pool will assure partial satisfaction of existing reclamation liabilities. Stated differently, if a bond pool comes up short of cash, the regulatory authority cannot and should not be able to simply "write off" any existing reclamation liabilities and then resume business as usual by proposed modifications to the previous ABS. This would be directly in conflict with the language of 30 CFR 800.11(e) and the purposes and objectives of section 509 of SMCRA, which provide that an ABS, must have available sufficient money to complete reclamation for any areas which may be in default at any time.

In Missouri's situation, even though Fund A has the potential to generate some $400,000 in additional monies, the Fund will still fall short in its ability to reclaim fully the seven forfeited sites. This is inconsistent with the requirements in 30 CFR 800.11(e). Therefore, the Director is not approving Missouri's proposed CMLR Fund system to the extent that it does not provide sufficient funding to adequately reclaim those sites for which it assumed reclamation responsibility prior to September 1, 1988. The Director is requiring Missouri to amend its program in a manner that will ensure sufficient funds are available to reclaim fully the defaulted acreage.

(ii) Fund B. To meet the requirements of 30 CFR 800.11(e) as discussed in the previous finding, Missouri's proposed CMLR Fund must be sufficient to cover Phase II and III reclamation liability. OSM has analyzed the ability of Fund B, as proposed by Missouri, to meet potential Phase II and III reclamation liabilities for the years 1989 through 2003. This study was based on the assumption that the same general level of operator participation and mining disturbance, as existed in the State through 1988, would continue and that Fund B would experience no further forfeitures. Additionally, based upon the assumption that, under conditions of bond forfeiture, the regulatory authority would not be required to assume the revegetation responsibility period specified in section 515(b) of SMCRA, no costs were assigned to Phase III reclamation. Based on the above assumptions, OSM's projections indicate that, by 1993, CMLR Fund B would be adequate to cover 35 percent of the Phase II reclamation liability, by 1998, 64 percent of the Phase II reclamation liability would be covered; and by 2003, 94 percent of the Phase II liability would be covered (Administrative Record No. MO–499). While the Director does not find the concept of Fund B, as proposed by Missouri, to be inconsistent with SMCRA, Missouri has not made a demonstration that the amount of funds is sufficient to comply with 30 CFR

800.11(e). Therefore the Director is not approving the separation of Fund B from Fund A and is requiring that Missouri demonstrate that the Fund's generation of monies will be adequate to reclaim all defaulted lands as discussed in Finding B.4.(a)(i) of this notice and that this separation of funds will not affect the solvency of the Missouri ABS.

(b) *CMLR Fund B Expenditures.* As previously mentioned, at section 444.960.5, Missouri proposes that moneys in Fund B may be utilized by the LRC for any aspect of reclamation except Phase I reclamation. However, at section 444.960.1, Missouri's approved statute states that moneys within the CMLR Fund (the entire Fund—not necessarily Fund B) will be used by the LRC to complete the reclamation plan for any permitted lands after the proceeds from any applicable performance bond for such reclamation have been exhausted. This would conceivably allow use of moneys in the CMLR Fund to complete Phase I, II, and III reclamation requirements. Missouri's proposed regulation at 10 CSR 40–7.041(4)(A) 2 reinforces the proposed statutory language at section 444.960.5 in that it limits Fund B use for reclamation of lands other than Phase I reclamation. Discussions between OSM and the State have verified that it is Missouri's intent not to allow Fund B moneys to be used for Phase I reclamation in the event of forfeiture. Therefore, the Director is requiring Missouri to amend its statutory language at section 444.960.1 to clarify, consistent with other changes that Missouri needs to make in response to the issues raised in this notice, how the CMLR Fund moneys will be spent, and the sufficiency of the Fund monies to meet 30 CFR 800.11(e).

5. RSMo 444.965—Payments into the CMLR Fund

(a) *Option to File a Full-Cost or Phase I Bond.* Missouri proposes to modify section 444.965.1 by setting September 1, 1988, as the date when permittees may either file a full-cost bond, or a Phase I reclamation bond. While the concept of optional participation in the alternative bonding system is not necessarily in conflict with SMCRA or implementing Federal regulations at 30 CFR 800.11(e), the Director is concerned that the change from mandatory to voluntary participation may have an adverse impact on the alternative bonding system's ability to meet all potential reclamation liability in the manner prescribed by the Federal regulations at 30 CFR 800.11(e)(1). In view of Missouri's traditionally small operator population (now less than a dozen operators), voluntary participation may prove catastrophic to the CMLR Fund's solvency. No analysis has been performed to determine the consequences of voluntary participation on Fund solvency or the adjustments necessary for the Fund to be maintained in a financially sound condition. The Federal regulation at 30 CFR 800.11(e)(1) requires that the regulatory authority have available sufficient money to complete the reclamation plan for any areas that may be in default at any time. Missouri has not demonstrated that this will be assured for its ABS if optional participation in the full-cost or Phase I reclamation bonding system is allowed. Therefore the Director is not approving the proposed non-mandatory participation option at section 444.965 concerning full-cost bond versus the ABS and is requiring Missouri amend its program to remove this provision or to make a demonstration that the ABS would be solvent consistent with the requirements at 30 CFR 800.11(e).

(b) *Initial CMLR Fund Assessment Rate.* Missouri proposes to modify section 444.965.2 to reflect new terminology, delete obsolete legislative reporting requirements and raise the assessment for the CMLR Fund from 30 cents to 45 cents per ton for the first 50,000 tons sold, shipped, or otherwise disposed of in a calendar year, and from 25 cents to 30 cents per ton for the next 50,000 tons sold, shipped or otherwise disposed of in such calendar year. The first two changes do not necessarily concern Federal program requirements and therefore are not inconsistent with Federal program requirements. While the third change would increase fees, thus assisting in restoring and maintaining Fund solvency, Missouri has not demonstrated any relationship to the funds generated by the fee increase with the actual or potential liability of the Fund. However, the proposed change is not inconsistent with section 509(c) of SMCRA or the Federal regulations at 30 CFR 800.11(e). The Director is therefore approving the mechanism for fee assessment proposed by Missouri with the condition that the State demonstrate that its proposed tonnage fee rates are sufficient to assure compliance with 30 CFR 800.11(e).

(c) *Buy-out Option.* At section 444.965.3, Missouri proposes to allow permittees to "buy-out" of the ABS between September 1, 1988, and September 1, 1993, provided that they file a full-cost bond as a replacement. Permittees who choose this option prior to September 1, 1993, would be required to pay a one-time assessment into the CMLR Fund. This assessment would be based on the permittee's projected annual coal production between September 1, 1988, and September 1, 1993 but could not exceed $125,000. After paying the one-time assessment, the permittee would not be liable for any additional assessments to the CMLR Fund unless the permittee thereafter elected to return to the ABS rather than filing a full-cost bond. If a permittee holding a Phase I bond after September 1, 1988, opts to file a full-cost replacement bond, any monthly assessment paid into the CMLR Fund between January 1, 1988, and the date of acceptance of the full-cost bond, would be credited as part of the one-time assessment. Permittees who file full-cost bonds after September 1, 1993, would be exempt from any assessments payable to the CMLR Fund. No comparable requirements are provided in either SMCRA or the Federal regulations with regard to the relationship between permittees filing full-cost bonds, and those participating in an ABS. Missouri is proposing a transition period in order to put in place its two-option bonding approach, as well as address the issue of cost liability to the CMLR Fund that resulted from prior bond forfeitures. At Finding B.4.(a), the Director determined that Missouri's CMLR Fund does have a continuing liability to reclaim sites forfeited in the past and is requiring Missouri to take appropriate action by modifying its program to ensure that those sites are fully reclaimed. As proposed, the two option bonding system and the uncertainties associated with Fund income do not provide assurance that the CMLR Fund will continue to be active and financially sufficient, since participation in it would be on a voluntary basis. Therefore there is no assurance that past bond forfeiture liabilities will be met. The Director is not approving the proposed non-mandatory participation option, at section 444.965.3 concerning the buy-out option from the ABS and is requiring Missouri to amend its program to remove this provision or to make a demonstration that past CMLR Fund liabilities will be resolved as required in Finding B.4.(a) of this notice, and that the Fund's financial solvency is and can be maintained on an actuarially sound basis to meet the requirements of 30 CFR 800.11(e).

(d) *CMLR Fund Ceiling.* At newly codified section 444.965.4, Missouri has modified existing language previously found at 444.965.2 to limit the applicability of the CMLR Fund assessment requirements to only those permittees that participate in the Phase I reclamation bond rather than all

permittees as was previously required. Missouri proposes to require that,

"Whenever the total balance in the [CMLR] fund exceeds seven million dollars as of the close of the State's fiscal year, no assessments shall be required during the State's next fiscal year, except that each new permittee filing a phase I reclamation bond pursuant to section 444.950 shall pay assessments pursuant to section 444.960 and this section until the permittee's payments equal those made by an existing permittee of comparable size. Whenever the fund balance is less than seven million dollars at the close of the State's fiscal year, all permittees who have elected to file phase I reclamation bonds pursuant to section 444.950, shall pay assessments into the fund as provided for in subsection 2 of this section."

Missouri's proposed language adds clarity to the administration of its proposed ABS and from that standpoint, the Director finds that it is not inconsistent with the requirements of the Federal program. However, Missouri has not demonstrated a relationship between the potential reclamation liability to the $7 million CMLR Fund ceiling amount, and therefore it cannot be determined whether that ceiling figure would be sufficient to maintain the solvency of the CMLR Fund and meet the requirements of 30 CFR 800.11(e)(1). The Director is therefore approving the proposed language conditioned upon the State's demonstration that the CMLR Fund will be operated in an actuarially sound and financially solvent manner.

(e) *CMLR Fund Adjustment.* Proposed language at section 444.965.5 would require that after September 1, 1993, whenever the CMLR Fund balance falls below $7 million, the tonnage assessment provided for in section 444.965.2 would resume at the rate of 25 cents per ton for the first 50,000 tons and 15 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year until the Fund balance equals at least $7 million at the close of the State's fiscal year. The Director agrees that the State needs the ability to adjust the fee schedule for the CMLR Fund. However, the Director is concerned that the "trigger mechanism" proposed by Missouri may not be sufficiently prompt or financially sound. Missouri has not demonstrated that the amount of the tonnage fee has any relationship to meeting its liabilities of the Fund and its ability to meet 30 CFR 800.11(e). Missouri proposes to establish the trigger for this provision based upon a minimum balance tied to a specific date, i.e., if the CMLR Fund is below $7 million on September 1, 1993, then the tonnage assessment will resume at the specified rate. In doing so, Missouri would impose a lack of flexibility to adjust the CMLR Fund amount to keep up with actual reclamation liability the CMLR Fund may have. Missouri's CMLR Fund would be especially vulnerable between September 1, 1993, through September 1, 1998, when fees would be reduced to 25 cents per ton for the first 50,000 tons sold and 15 cents per ton for the second 50,000 tons. This is so because, as Missouri now proposes, beginning September 1, 1993, permittees' participation in the ABS would become voluntary without any requirement for a buy-out that would provide sufficient supplementary funding to the CMLR Fund to meet the 30 CFR 800.11(e) requirements. Should forfeitures threaten the Fund's solvency, the State has not provided a method to replenish its reserves in a timely or immediate manner. More importantly, if the Fund suffers a major short fall of funds, the State has not identified how solvency will be reestablished.

The Federal regulations at 30 CFR 800.11(e) require that the regulatory authority have available sufficient money to complete the reclamation plan for any areas that may be in default at any time. Missouri has not demonstrated that its proposed changes meet these requirements. Therefore, the Director is not approving the proposed changes and is requiring Missouri to modify the system to ensure that the Fund will be operated in a financially sound manner as required by the Federal regulation at 30 CFR 800.11(e)(1).

(f) *CMLR Fund Balance Below $2 Million.* At section 444.965.6, Missouri proposes that:

After September 1, 1998, whenever the fund balance falls below two million dollars, the assessment rate established in [RSMo 444.965.2] shall increase to a per ton rate of 30 cents per ton for the first 50,000 tons and 20 cents per ton for the second 50,000 tons of coal sold, shipped or otherwise disposed of in a calendar year by a permittee. The increased tonnage assessment shall remain in effect until the fund balance is at least three million dollars at the close of the State's fiscal year, at which time the assessment rate will revert to the rate established pursuant to [RSMo 444.965.5].

As discussed in the previous finding, the Director agrees that the ability to adjust the fee schedule for the CMLR Fund is needed. However, as also pointed out in the previous finding, the Director notes that greater flexibility is needed to secure additional money on an as needed basis to assure that there is a reasonable relationship of Fund income and reserves to liabilities. For the reasons stated in the previous finding, the Director is therefore not approving Missouri's proposed change, and is requiring Missouri to modify its provisions to ensure the Fund's ability to operate in a financially sufficient manner.

(g) *Apparent Ambiguity/Conflict in the Statutory Language.* At section 444.965.5, Missouri's proposed statutory language provides that:

After September 1, 1993, whenever the [CMLR] fund balance *falls below* seven million dollars, *the tonnage assessment provided for in subsection 2 of the section shall resume* at the same rate of twenty-five cents per ton for the first fifty thousand tons and fifteen cents per ton for the second fifty thousand tons of coal sold, shipped or otherwise disposed of in a calendar year by a permittee. (emphasis added).

The "falls below" language of the statute makes unclear whether after September 1, 1993, the new assessment rate will be effective any time the CMLR Fund balance is merely below $7 million, or whether the new assessment rate will take effect only after the CMLR Fund first reaches the $7 million ceiling, and then "falls below" that amount. However, Missouri's proposed regulations that implement this statutory provision provide, at 10 CSR 40–7.041(E)2, that "[a]fter September 1, 1993, whenever the [CMLR] fund balance is below seven million dollars" the new assessment rate of 25 cents per ton for the first 50,000 tons of coal, and 15 cents per ton for the next 50,000 tons, will take effect (emphasis added). Furthermore, this same regulation provides that the new assessment rate "shall remain in effect until the [CMLR] fund balance reaches seven million dollars * * *." (emphasis added). The proposed regulatory provision makes clear that the new assessment rate will be effective after September 1, 1993, any time the CMLR Fund balance is below $7 million, regardless of whether the Fund has first reached the $7 million ceiling.

The emphasized "tonnage assessments provided for in subsection 2 of this section shall resume" statutory language suggests an apparent conflict with the tonnage assessment rates provided in subsection two (45 and 25 cents per ton before 1993) "resuming" at the rate of 25 and 15 cents per ton. The proposed regulatory provision implementing this statutory provision provides, at 10 CSR 40–7.041(E)2, that "[a]fter September 1, 1993, whenever the [CMLR] fund balance is below seven (7) million dollars, the assessment established in subsection (1)(A)1. of this rule shall be reinstated at a rate of no more than twenty-five cents * * * and no more than fifteen cents * * *"

(emphasis added). In other words, in reading the proposed regulatory language in conjunction with the proposed statutory language, it is evident that the assessment procedure, and not the previously established assessment rate, shall resume if, after September 1, 1993, the CMLR Fund balance is below $7 million.

Because of the clarifying regulations implementing Missouri's statute, the Director finds that the apparent ambiguity in Missouri's proposed statute at section 444.965.5 does not warrant a disapproval of the statutory provision. However, as stated in Findings B.5.(e), the Director is not approving this statutory provision for other substantive reasons. The Director notes that, in responding to the requirements set forth in Finding B.5.(e), Missouri will have an opportunity to change the structure and provisions of RSMo 444.965.5. As part of this process, Missouri should consider taking appropriate actions to eliminate any question about its statutory authority for its regulations in administration and interpretation of its program.

C. Findings on Regulatory Amendments

1. 10 CSR 7.011, Bond Requirements

(a) *10 CSR 40–7.011(1), Definitions.* (i) *Definition of "Self Bonding".* At 10 CSR 40–7.011(1)(C), Missouri proposes to define "self-bonding" to mean "an indemnity agreement in a sum certain executed by the permittee or any corporate guarantor and made payable to the State of Missouri, with or without separate surety." The proposed State definition is substantively identical to the Federal definition of self-bonding at 30 CFR 800.5(c) except that, under the Federal definition, when there is a corporate guarantor, the permittee and the corporate guarantor must both execute the indemnity agreement. Under the proposed Missouri definition, the agreement may be executed by the corporate guarantor alone, thus possibly relieving the permittee of responsibilities it has under the Federal program.

The Director finds that the proposed Missouri definition of self-bonding is less effective than the Federal definition and is requiring Missouri to amend its proposed definition of self-bonding to require that permittees as well as corporate guarantors execute self-bonding indemnity agreements.

(ii) *Definition of "Phase I Bond".* At 10 CSR 40.7011(1)(E), Missouri proposes to define a "Phase I bond" as "a performance bond conditioned on the release of Phase I liability." Under the proposed Missouri bonding program, an operator may elect to file a conventional or full-cost performance bond covering all phases of reclamation, or elect to participate in the ABS by filing a Phase I bond and contributing to the CMLR Fund for bond coverage of the other phases of reclamation. Therefore, the term "Phase I bond" has a unique meaning in the Missouri program that helps distinguish the ABS from conventional performance bonding. The Federal regulations do not define Phase I bonds. However, the Federal regulations condition the release of bonds on the performance of reclamation, whereas Missouri proposes to condition the release of its Phase I bond on the release of "Phase I liability." Missouri does provide Phase I liability requirements at 10 CSR 40–7.021(2)(B) of its regulation. These requirements include specific reclamation performance requirements. As a result, Missouri's Phase I bond conditioned on the release of Phase I liability has the same effect as the Federal regulation bond release condition on performance of reclamation.

The Director finds that the addition of the definition of Phase I bond to the Missouri program is not inconsistent with and no less effective than the Federal program and is approving the change.

(iii) *Definition of "Full-Cost Bond".* At 10 CSR 40–7.011(1)(F), Missouri proposes to define "full-cost bond" as "a performance bond conditioned on the release of Phase I, II and III liability." Missouri also proposes a definition of "full-cost bond" in its revised statute at RSMo 444.805(8). The statutory definition provides a more comprehensive explanation of the term and was found to be no less stringent than section 509(a) of SMCRA, refer to Finding B.1.(a) of this notice. Because Missouri is proposing the option of two different bonding systems in its program, the full-cost bond and the Phase I bond, the term "full-cost bond" has a unique meaning in its program and is needed to distinguish between the two systems.

While the Federal regulations do not define "full-cost bond," the Director finds that Missouri's regulatory definition of "full-cost bond" along with its statutory counterpart definition provides for administrative clarity to its program and is not inconsistent with the Federal program. The Director is therefore approving the change.

(iv) *Definition of "open pit".* At 10 CSR 40–7.011(1)(G), Missouri proposes to define "open pit" as the "area between the crest of the highwall to the toe of the spoil." The Federal program does not define "open pit". However, Missouri's proposed ABS provides for a minimum bond based on the number of acres of open pit. In order to implement the minimum bond provision, there must be a clear definition of open pit. The Director finds that the definition of "open pit" provides needed clarification to the Missouri program and is not inconsistent with the Federal program. The Director is approving the proposed change.

(b) *10 CSR 40–7.011(2), Requirement to File a Bond.* (i) *General bond filing requirements.* Missouri's regulation at 10 CSR 40–7.011(2)(A) sets out general bond filing requirements and minimum conditions that bonds must meet. Missouri proposes to delete the term "pit reclamation" here and throughout its program. Under the currently approved Missouri bonding program there is only one type of performance bond, a pit reclamation bond. Under Missouri's proposed revision to its bonding program there will be two types of performance bonds, a Phase I reclamation bond and a full cost reclamation bond. Therefore, use of the term "pit reclamation" in reference to reclamation performance bonds is no longer appropriate throughout Missouri's program. The Director finds that the deletion of the term "pit reclamation" in the Missouri program is needed and is approving the proposed change.

(ii) *Bond conditioning.* Missouri's approved provision at 10 CSR 40–7.011(2)(A) requires that performance bonds be conditioned upon the faithful performance of reclamation. The corresponding Federal regulation at 30 CFR 800.11(a) requires that performance bonds be conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan. The proposed Missouri regulation would limit liability to "reclamation" only. The Director finds that Missouri's performance bond conditions at 10 CSR 40–7.011(2)(A) are less effective than the Federal performance bond conditions. Missouri is required to further amend its program to provide requirements that are no less effective than the Federal regulation requirements at 30 CFR 800.11(a).

(iii) *Bond filing options.* At 10 CSR 40–7.011(2)(B), Missouri proposes to allow permittees the option to file either a Phase I bond or a full-cost bond. If the permittee files a full-cost bond prior to September 1, 1993, it must make a Phase I bond, it must also make payments into the CMLR fund under 10 CSR 40–7.041(1)(B)1. If the permittee files a lump sum payment into the fund under 10 CSR

40–7.041(1)(B)3. Permittees filing full cost bonds after September 1, 1993, are not required to make payments to the fund.

The Federal program has no provision corresponding to Missouri's proposals at 10 CSR 40–7.011(2)(B). However, as discussed in Finding B.2. of this notice, the Director is concerned with an optional bonding system's impact on the ability for the ABS to operate in a solvent manner. As at Finding B.2., the Director is not approving the bond filing options proposed by Missouri at 10 CSR 40–7.011(2)(B), and is requiring Missouri to either remove the provision or to demonstrate that the resulting financial aspects of it will be sufficient to allow the ABS to function in a solvent manner as required by the Federal regulations at 30 CFR 800.11(e).

(iv) *Option to change bonds.* At 10 CSR 40–7.011(2)(C), Missouri proposes a regulation that would prevent permittees who file full cost bonds prior to September 1, 1993, from reverting to filing a Phase I bond until after September 1, 1993, unless otherwise authorized by the State director. The proposed regulation gives Missouri the administrative control to prevent operators from indiscriminately changing from one bond option to another thus making administration of the bonding program difficult.

The Federal program has no provision corresponding to 10 CSR 40–7.011(2)(C). The Director finds that the ability for Missouri to control refiling efforts from a full-cost bond to a Phase I bond is acceptable as long as the ABS can continue to operate in a solvent manner and is approving Missouri's proposed requirement with that condition.

(v) *Withdrawn regulations.* In its March 18, 1988, amendment submittal Missouri proposed to add the following regulation requirements: At 10 CSR 40–7.011(2)(D), the requirement that "except as noted in subsection (2)(E), the amount of bond shall be two thousand five hundred dollars ($2,500) per permitted acre or an amount as set by the commission for the following permitted areas:"; at 10 CSR 40–7.010(2)(E), a requirement that "the amount of bond on permitted coal preparation areas shall be ten thousand dollars ($10,000) per acre."; and at 10 CSR 40–7.010(2)(F), a requirement that "the minimum amount of bond applied to a single mine shall be ten thousand dollars ($10,000). For the purposes of this subsection, a mine is defined as an organic mining operation occupying one (1) or more permit areas and utilizing equipment primarily maintained at common locations." Subsequent to the submittal of the above proposed regulation changes, Missouri submitted a major rewrite of its bonding regulations on January 12, 1989, effectively withdrawing the March 18, 1988, proposal. Therefore, the Director is taking no action on the superceded March 18, 1988, proposed regulation changes.

(c) *10 CSR 40–7.011(3), Incremental Bonding.* Missouri's existing incremental bonding regulations at 10 CSR 40–7.011(3) (A) and (B) provide the same requirements as the Federal regulations at 30 CFR 800.11 (1) and (2). In a letter dated November 6, 1989, pursuant to 30 CFR Part 732, Missouri was notified of an additional program amendment requirement to provide for counterpart Federal regulation provision of 30 CFR 800.11(b)(4) that requires separately bonded increments within a permit area be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary.

In this review, the Director has identified other deficiencies with the Missouri incremental bonding regulations. Missouri does not provide counterparts to the Federal regulations that (1) require the operator to identify the initial and successive areas of increments for bonding on the permit application map and specify the bond amount to be provided for each area or increment as required by the Federal regulation at 30 CFR 800.11(b)(3), and (2) require that the applicant submit an incremental bonding schedule as required by 30 CFR 800.11(d)(3). The Director is requiring Missouri to further amend its program at 10 CSR 40–7.011(3) to fix these deficiencies.

(d) *10 CSR 40–7.011(4), Bond Amounts.* (i) *$2,500 Phase I fixed rate.* At 10 CSR 40–7.011(4)(A), Missouri proposes to modify its regulations to phase in its newly proposed Phase I bond option and the Phase I fixed bond rate of $2,500 per acre for (1) any permit approved on or before April 30, 1986, but for which no bond has been submitted; (2) any permit totally bonded at $500 per permitted acre, but for which work had not begun on or before April 30, 1986; (3) permits with incremental bonding where a given increment was bonded at $500 per acre but for which work had not begun on or before April 30, 1986, or any increment within a permitted area that was not bonded on April 30, 1986; and (4) any new permit submitted after April 30, 1986.

An analysis of the $2,500 per acre fixed bond rate was previously provided in this notice at Finding B.3.(a)(i). That finding concluded that the fixed rate of $2,500 per acre was inconsistent with the Federal regulation at 30 CFR 800.11(e)(1) that requires that an ABS assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time.

Accordingly, the Director finds that Missouri's proposed regulation at 10 CSR 40–7.011(4), to the extent that it sets the Phase I performance bond at a fixed rate of $2,500 per acre does not meet the requirements of the Federal regulations at 30 CFR 800.11(e)(1). The Director is not approving the proposed change and is requiring Missouri to amend its regulation in a manner consistent with the required amendment the Director placed on Missouri at Finding B.3.(a)(i).

(ii) *$500 fixed rate bond.* At 10 CSR 40–7.011(4)(B), Missouri sets a $500 per acre fixed rate Phase I performance bond amount for all permitted areas not covered in 10 CSR 40–7.011(4)(A) 1 through 4. As now proposed, the $500 Phase I bond is no longer tied to the bond Fund, that is, if the Phase I bond amounts were inadequate, Missouri could not use money from the CMLR Fund to complete required reclamation. Past experience has shown that even with assistance of the CMLR Fund, the $500 per acre bond rate was insufficient to complete required reclamation and to allow the bond pool to meet its obligation to reclaim defaulted land as required by the Federal regulation at 30 CFR 800.11(e).

The Director finds that Missouri's regulation at 10 CSR 40–7.011(4)(B), to the extent that it grandfathers some acreage at the Phase I performance bond at a fixed rate of $500 per acre, does not meet the requirements of the Federal regulation at 30 CFR 800.11(e)(1) that the regulatory authority have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. The Director is requiring Missouri to amend its regulation that allows a Phase I bonding at the $500 per acre fixed rate to provide for performance bond amounts in a manner consistent with the Federal program requirements.

(iii) *$10,000 fixed rate coal preparation area bond.* At 10 CSR 40–7.011(4)(C), Missouri's regulation sets the Phase I performance bond at a fixed rate of $10,000 per acre for permitted coal preparation areas. Discussion of the $10,000 per acre fixed rate bond for preparation areas has been previously provided at Finding B.3.(a)(ii) of this notice. That finding concluded that Missouri's $10,000 per acre fixed rate bond for coal preparation areas does not meet the ABS requirements of 30 CFR 800.11(e)(1). The same reasoning and conclusion apply to this proposed

regulation. Therefore, the Director is not approving the $10,000 per acre fixed bond rate and is requiring Missouri to amend its program to provide for performance bond amounts in a manner consistent with the Federal program requirements.

(iv) *Open pit bond.* At 10 CSR 40–7.011(4)(D), Missouri proposes to set, for mines with less than 1,000 bonded acres, a minimum amount of Phase I bond of $10,000 for a single mine, or the equivalent of 20 acres at $2,500 per acre, of bond for each acre of open pit area, whichever is greater. The proposed regulation defines a single mine as an organic mining operation occupying one or more permit areas and utilizing equipment primarily maintained at common locations.

These same minimum bonding standards have been previously discussed at Finding B.3.(a)(iii) of this notice. In Finding B.3.(a)(iii), the Director concluded that the open pit minimum bond had not been shown to be sufficient to complete the required reclamation in the event of bond forfeiture and is requiring Missouri to (1) demonstrate that the open pit minimum bond would be sufficient to assure the completion of the required Phase I reclamation, or (2) amend its program to provide an amount that assures Phase I reclamation requirements can be met. For the same reasons set forth in Finding B.3.(a)(iii) of this notice, the Director finds that Missouri's proposed regulations at 10 CSR 40–7.011(4)(D) does not meet the requirements at 30 CFR 800.11(e)(1) and is requiring Missouri to amend its regulations in a manner consistent with the amendment required at Finding B.3.(a)(iii) of this notice.

(v) *Full-cost bond liability.* At 10 CSR 40–7.011(4)(E), Missouri proposes to require that the amount of full cost bonds shall be based on estimates of the cost to reclaim the bonded area in the event of bond forfeiture and that the amount shall be determined by the director of the Missouri LRC from the information in the permit. Counterpart Federal regulations at 30 CFR 800.14(a)(1) require, as does the proposed Missouri rule, that the bond amount be determined by the regulatory authority. The Federal regulations also contain requirements that are not found in the Missouri program. These include (1) at 30 CFR 800.14(a)(3), the requirement that the bond amount reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; (2) at 30 CFR 800.14(a)(4), the requirement that the amount of the bond be based on, but not limited to, the estimated cost submitted by the permit applicant; and at 30 CFR 800.14(b), that the amount of the bond be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in event of forfeiture. The Director notes that while the above Federal regulation requirements are not found in the Missouri regulation, its statutory language at RSMo 444.830.1 does include these requirements for a full-cost bond. The Director therefore finds that Missouri's program does provide requirements that are no less stringent than and no less effective than the Federal program requirements, although to avoid confusion, the State is encouraged to reference the statutory requirements in its regulations.

(vi) *Full-cost bond adjustment.* At 10 CSR 40–7.011(4)(F), Missouri proposes that the amount of the full cost bond and the terms of each acceptance of the applicant's bond may be adjusted by the commission from time to time as affected land acreage are increased or decreased or where the cost of future reclamation changes. Counterpart Federal regulations at 30 CFR 800.15(a) include similar requirements except for one substantive difference and one omission. Missouri's proposed regulation states that the commission "may" adjust the bond from time to time, whereas the Federal regulations require that the regulatory authority "shall" adjust the bond. Missouri's use of the term "may" could allow discretion to the LRC that is not allowed by the Federal regulations. Also the Director notes that Missouri's regulation is in conflict with its statutory counterpart at RSMo 444.830.4 that requires that the applicant's bond be adjusted by the commission from time to time. Missouri's use of the term "may" in its regulations conflicts with its statutory requirements and is less effective than the Federal regulations. The Director is not approving Missouri's proposed change and is requiring Missouri to amend its program to be consistent with its statutory requirements and no less effective than the Federal requirements.

Missouri's proposed regulations also lacks a counterpart to the Federal regulation that authorizes, but does not compel, the regulatory authority to specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill the above requirement. The Director however, finds that since it is discretionary the omission of this Federal provision does not render Missouri's program less effective than the Federal program requirements.

A second requirement of Missouri's proposed rule at 10 CSR 40–7.011(4)(F) authorizes the State director to require permittees to provide surveyed measurements of the pit size at any time during the operation and to require that such surveys be certified by a registered professional engineer or registered land surveyor. The Federal program does not include a requirement for measurement of the size of mine pits. However, the Director finds that this requirement is not inconsistent with the Federal requirements and will aid Missouri in the administration of its program since bonding rates are based in part on the extent of the open pit. Therefore, the Director is approving the proposed change.

Missouri's proposed regulations do not include provisions corresponding to the Federal regulations at 30 CFR 800.15 (b), (c) or (d). These regulations include (1) at 30 CFR 800.15(b)(1), the requirement that the regulatory authority notify certain parties of any proposed bond adjustment; (2) at 30 CFR 800.15(b)(2), the requirement that the regulatory authority provide the permittee an opportunity for an informal conference on a bond adjustment; (3) at 30 CFR 800.15(c), the provision that allows permittees to request bond amount reductions upon submission of certain information and specifies that certain types of bond reductions are not considered bond releases; and (4) at 30 CFR 800.15(d), the requirement that the regulatory authority review bond adequacy upon permit revision, and, if necessary, require adjustment to conform to the revised permit.

The Director is therefore requiring Missouri to further amend its regulation at 10 CSR 40–7.011(F) to provide the above requirements in order to be no less effective than the Federal regulations at 30 CFR 800.15 (b), (c) and (d).

(e) *10 CSR 40–7.011(5), Types of Bonds.* (i) *10 CSR 40–7.011(5)(A) Surety Bonds.* (1) Non-cancellation of surety bond. Missouri's approved provision at 10 CSR 40–7.011(5)(A)2 allows a surety company to cancel a bond for any lands affected after the surety's 60-day notice of cancellation period expires. The State regulation also requires the bonding obligation to remain in effect for permitted acreage affected prior to expiration of the 60-day notice period. The surety company's notice of cancellation becomes effective when received by Missouri. The Federal regulation counterpart at 30 CFR 800.20(b) restricts a surety's cancellation

request to only those lands not disturbed. Rather than becoming effective upon receipt of a notice, the Federal regulation requires prior consent by the regulatory authority to a cancellation for it to take effect.

As discussed in the March 13, 1979, **Federal Register** (44 FR 15118), the Federal regulation incorporates the:

"first principal [sic] of surety law, i.e., the surety undertakes the obligation to stand in the shoes of the principal, and his obligation may not be rescinded or terminated without the consent of the party to whom the duty is owed." The **Federal Register** further states that " * * * if arrangements satisfactory to the regulatory authority cannot be made, the burden will be on the surety to compel the permittee to suspend operations to prevent the surety's obligation from increasing as new areas are disturbed. The regulatory authority will have no obligation to suspend operations because the bond will remain in effect until cancellation is approved under the regulation."

The Director finds that Missouri's surety cancellation provision is less effective than its Federal Regulation counterpart at 30 CFR 800.20(b) and is requiring Missouri to further amend its regulation at 10 CSR 40–7.011(5)(A)2 to restrict a surety's cancellation request to only those lands not disturbed and then only with the prior consent of the regulatory authority.

(2) Surety financial restrictions. Missouri proposes to revise the provision at 10 CSR 40–7.011(5)(A)4 to clarify the financial restriction placed on surety companies. The provision would require that the State not accept bonds from a single surety company that has provided bonds for multiple permits issued to the same permittee that in total exceed 30 percent to the surety company's capital surplus account. While there is no direct counterpart in the Federal regulations, the Director finds that the proposed amendment is not inconsistent with the Federal regulation bonding requirements at 30 CFR part 800 that allow sureties licensed in a State to issue bonds and is approving the proposed change. Consistent with section 505(b) of SMCRA, this provision will further environmental protection by limiting the regulatory authority's exposure to surety insolvency.

(3) Incapacity of surety company. Missouri's approved provision at 10 CSR 40–7.011(5)(A)8 requires the State to issue a cessation order to the permittee if a surety company is insolvent and the permittee has not replaced bond coverage within 60 days. This same requirement for the issuance of a cessation order is included in 10 CSR 40–7.011(5)(B)7 regarding the required action to be taken if a bank that issues certificates of deposit should go into insolvency or bankruptcy and 10 CSR 40–7.011(5)(D)8 regarding self-bonding by corporations that no longer satisfy self-bonding conditions. The Federal counterpart at 30 CFR 800.16(e)(2) also requires the permittee to cease operations if bond coverage is not replaced within 90 days. In addition, the Federal counterpart requires the permittee to begin reclamation immediately upon expiration of the 90 days. The Director finds that the State's provisions are less effective than the Federal regulations since the State does not require the permittee to begin reclamation in accordance with the Federal regulation counterparts. Missouri is required to further amend its regulation to provide for no less effective than requirements as the Federal regulation at 30 CFR 800.16(e)(2).

(ii) *10 CSR 40–7.011(5)(B) Certificates of Deposit.* (1) Certificate of deposit amount. Missouri proposed to revise 10 CSR 40–7.011(5)(B)2, that requires that the value of a certificate of deposit securing a personal bond shall be in the same amount as the required bond amount, by adding "or in an amount greater than the bond." There is not a direct Federal counterpart to this regulation. However, since it does not affect the regulatory authority exposure, the Director finds that Missouri's proposed change at 10 CSR 40–7.011(5)(B)2 is not inconsistent with section 509(b) of SMCRA that requires the market value of securities, such as certificates of deposit, to be equal to or greater than the amount of bond required. The Director is therefore approving Missouri's proposed changes at 10 CSR 40–7.011(5)(B)2.

(2) Payee on a certificate of deposit. Missouri's approved provision at 10 CSR 40–7.011(5)(B)2 requires that a certificate of deposit be made payable to the State of Missouri as well as the operator. The Federal counterpart at 30 CFR 800.21(a)(3) requires that a certificate of deposit be made payable to the regulatory authority or be assigned to the regulatory authority in writing and upon the records of the bank. Section 509(d) of SMCRA requires that a security, such as a certificate of deposit, be deposited upon the same terms as the terms upon which a surety bond may be deposited. The Federal regulations at 30 CFR 800.16 require the bond to be payable to the regulatory authority. The Missouri regulation allows a certificate of deposit to be made payable to both the operator and the State. With an operator as a co-payee on a certificate, the State's control over the certificate for bond forfeiture purposes and its protection from third-party creditors of the permittee is less effective than the Federal regulation. Therefore, with respect to a certificate of deposit being made payable to both the operator and the State of Missouri, the Director finds that Missouri's regulation at 10 CSR 40–7.011(5)(B)2 is less effective than the Federal regulation at 30 CFR 800.21(3) and less stringent than SMCRA at section 509(d). The Director is requiring Missouri to further amend its provision at 10 CSR 40–7.011(5)(B)2 to be no less effective than the Federal regulation requirements at 30 CFR 800.21(a)(3).

(3) Issuing bank's insurance. At 10 CSR 40–7.011(5)(B)4, Missouri requires that the issuing bank or savings and loan company be protected by the Federal Deposit Insurance Corporation. It proposes to replace the word "protected" with the word "insured." The Federal counterpart to this regulation at 800.21(d)(4) similarly provides that the regulatory authority cannot accept an individual cash account in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation and 30 CFR 800.21(d)(1) requires that cash accounts and certificates of deposit be Federally insured or equivalently protected. Therefore, the Director finds that the revised Missouri regulation is no less effective than the Federal regulation.

(iii) *10 CSR 40–7.011(5)(D) Self-bonding.* (1) Definitions. At 10 CSR 40–7.011(5)(D)1, Missouri proposes to add the definitions of financial terms related to self-bonding. These terms are "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," and "tangible net worth" at 10 CSR 40–7.011(5)(D)1.A, B, C, D, E, and F respectively. The definitions are identical to the corresponding Federal definitions at 30 CFR 800.23(a). Therefore, the Director finds the provisions added at 10 CSR 40–7.011(5)(D)1.A through F to be no less effective than the Federal regulations.

The Federal regulations on self-bonding at 30 CFR 800.23(a) also include a definition of "parent corporation" that the Missouri program does not contain. Prior to February 16, 1988, the Federal self-bonding regulations limited guarantors to eligible parent corporations of permittees applying for self-bonding. However, OSM amended the Federal regulations at 30 CFR 800.23(c)(2) on February 16, 1988, to allow eligible non-parent companies to apply as self-bonding guarantors provided that they met the conditions of continuous operations and financial

capabilities. These applicants are referred to as "any corporate guarantor." Missouri's regulation at 10 CSR 40–7.011(5)(D)3 allows "any third party" guarantor to apply as a self-bonding guarantor provided the same continuous operation and financial capability conditions are met as well as requiring the third party guarantor to have a long term interest in the surface coal mining operation. Missouri's use of the phrase "any third party" is more inclusive and no less effective than the Federal regulation phrase "any corporative guarantor" including "parent guarantor." The Director therefore finds that the omission of the definition of "parent corporation" in the Missouri program does not render it less effective than Federal requirements.

(2) Conditions for acceptance of a self-bond. At 10 CSR 40–7.011(5)(D)2.A and B, Missouri proposes to add provisions stating that the commission may accept self-bonds if the applicant designates an agent for service of process, and the applicant has been in continuous operation as a business entity for 5 years prior to applying. These Missouri provisions are substantively identical to the Federal regulation requirements at 30 CFR 800.23(b) (1) and (2). Therefore, the Director finds Missouri's proposed regulation to be no less effective than the Federal regulation requirements and is approving the proposed change.

Additionally, the Federal regulation at 30 CFR 800.23(b)(2)(ii) provides that the regulatory authority may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations. Missouri does not provide for this exclusion, but this omission establishes a more rigorous and hence no less effective qualification standard for self-bond applicants than do the Federal regulations. Therefore, the Director finds the State's provisions at 10 CSR 40–7.011(5)(D)2.A and B to be no less effective than the corresponding Federal regulations and is approving the proposed changes.

(3) Self-bonding financial criteria. At 10 CSR 40–7.011(5)(D)2.C, Missouri proposes to add provisions that would establish financial criteria for the commission to accept self-bonds. Missouri's proposed regulations are substantively the same as those set forth in the Federal regulations at 30 CFR 800.23 (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) with one exception. The Missouri regulations present the financial ratios of total liabilities to net worth and current assets to current liabilities as actual ratios rather than as decimal fractions. For example, the ratio of current assets to current liabilities is the relation between these two quantities, and is computed by dividing the current asset quantity by the current liability quantity. The result is expressed in the Federal regulations as a decimal fraction of 1.2. If this quantity were expressed as a ratio it would be 1.2:1.0, not 1.2 as stated in the Missouri regulation. The same applies to the ratio of total liabilities to net worth as expressed in the Missouri regulation. With the exception of the way in which the ratio values are expressed using the ratio sign (:) Rather than a decimal value, the Missouri provisions are no less effective than the Federal requirement. Therefore, the Director is approving this provision with the requirement that Missouri express the ratio values as decimal quantities as in the Federal regulation.

(4) Self-bonding financial information. At 10 CSR 40–7.011(5)(D)2.D, Missouri proposes to add the requirement that the applicant submit "financial statements for the last completed fiscal year audited by an independent certified public accountant and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion." Missouri's proposed regulation is similar to the corresponding Federal regulation at 30 CFR 800.23(b)(4)(i) with one exception. The Federal regulation additionally requires that the accountant's audit or review opinion be prepared using generally accepted accounting principals. The Director finds that, with this exception, the Missouri provision is no less effective than the corresponding Federal regulation and is approving the provision with the requirement that Missouri further amend its regulation to add the condition that the audit or review report be prepared by an accountant in conformity with generally accepted accounting principles.

(5) Self-bonding third-party guarantee. Missouri proposes to add regulations at 10 CSR 40–7.011(5)(D)3 that would allow the LRC to:

> Accept a written guarantee for an applicant's self-bond from a third-party guarantor with a long-term vested interest in the surface coal mining operation if the guarantor meets the conditions of paragraph (5)(D)2 as if it were the applicant. The applicant must still meet the requirements of paragraphs (5)(D)2.A, B and D of this rule. Copies of documents demonstrating that interest must be submitted to the State director. The written guarantee shall provide that (1) if the applicant fails, the guarantor is liable to complete the reclamation plan or provide funds to do so; (2) the guarantee shall remain in force unless the guarantor provides notice at least 90 days in advance of cancellation and the director accepts the cancellation; and (3) cancellation can be accepted only if the applicant obtains suitable replacement bond before cancellation.

The Missouri provisions are substantively similar to the corresponding Federal regulation at 30 CFR 800.23(c)(2). However, Missouri has not provided regulations that correspond to the Federal regulation at 30 CFR 800.23(c)(1) pertaining to requirements for a parent corporation guarantor because the Missouri provisions do not differentiate between parent guarantors and non-parent guarantors, but rather refer to any corporate guarantor as a third-party guarantor. Therefore, the omission of provisions for a parent guarantor does not render Missouri's regulations less effective than the applicable Federal self-bonding regulations. In addition, the Missouri regulation at 10 CSR 42–7.011(5)(D)3 requires a third-party guarantor to demonstrate a long-term vested interest in the surface coal mining operation. There is no direct Federal counterpart to this provision; however, the proposed change is not inconsistent with the Federal regulation provisions at 30 CFR 800.23(c)(2) in that it does not adversely affect the regulatory authority's risk exposure.

As discussed above, the Director finds that Missouri's proposed regulations at 10 CSR 40–7.010(5)(D)3 are no less effective than the Federal regulation requirements at 30 CFR 800.23(c) and is approving the proposed changes.

(6) Tangible net worth limitation. At 10 CSR 40–7.011(5)(D)4, Missouri proposes to limit the amount of an applicant's or third-party guarantor's proposed and outstanding self-bonds to 25 percent of the applicant's or third-party guarantor's tangible net worth in the United States. The Federal regulation at 30 CFR 800.23(d) provides for this same requirement but separately identifies the applicant, a corporate guarantor and a non-parent guarantor as needing to meet the 25 percent limit. Missouri's use of the term "third party guarantor" includes both a corporate or non-parent guarantor. Therefore, the Director finds that Missouri's proposed regulation is no less effective than the Federal regulation at 30 CFR 800.23(d) and is approving the proposed changes.

(7) Self-bond indemnity agreement. At 10 CSR 40–7.011(5)(D)5.A, Missouri proposes to add requirements for

executing an indemnity agreement that would require execution of the agreement by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally. If the applicant is a partnership, joint venture, or a syndicate, the agreement shall bind such partnership or party who has a beneficial interest, directly or indirectly, in the applicant. The provisions at paragraph (D)(5)A are substantively identical to the Federal regulations at 30 CFR 800.23 (e)(1) and (e)(3). However, as proposed, it is unclear if Missouri would require that an indemnity agreement be executed by a third party non-corporate guarantor since its proposed regulation only specifies the corporate guarantor. Missouri needs to require that a third party non-corporate guarantor also execute an indemnity agreement.

At 10 CSR 40–7.011(5)(D)(5)B, Missouri requires that corporations applying for a self-bond or corporations guaranteeing a permittee's self-bond submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporations. The corresponding Federal regulation at 30 CFR 800.23(e)(2) requires submission of an indemnity agreement by both the applicant and the guarantor. Requiring only one entity to submit the agreement is inconsistent with the Federal regulation requirement and Missouri's provision at 10 CSR 40–7.011(5)(D)(5)A that requires all parties to execute the agreement, including the third-party guarantor. The Federal regulation at 800.23(e)(2) also requires an affidavit to be submitted with the indemnity agreement attesting to its validity under other applicable Federal and State laws to which the corporations may be subject. The Federal regulation at 30 CFR 800.23(e)(4) requires that the applicant, parent or non-parent corporate guarantor be required to complete the approved reclamation plan for the lands in default or pay to the regulatory authority an amount necessary to complete the approved reclamation plan not to exceed the bond amount. The regulation also provides that if permitted under State law, the indemnity agreement shall operate as a judgement when under forfeiture.

The Director finds that with the exception of (1) the lack of the requirement that the third party non-corporate guarantor also execute the indemnity agreement, (2) the lack of a requirement that both the applicant and guarantor sign the indemnity agreement, (3) the lack of a requirement to submit an affidavit with the indemnity agreement, (4) the lack of a requirement to complete the reclamation plan, and (5) the lack of a requirement for the agreement to operate as a judgement under forfeiture; the Missouri provisions are no less effective than the corresponding Federal regulations. Therefore, the Director is approving in part the provisions at 10 CSR 40–7.011(5)(D)(5) and is requiring Missouri to further amend its program to be no less effective than Federal regulations by providing the provisions identified above.

(6) Self-bonding financial information. At 10 CSR 40–7.011(5)(D)(6), Missouri proposes to require that annual updates to the financial information be provided by the applicant or the applicant and guarantor, if applicable. This provision is similar to and no less effective than the corresponding Federal regulation at 30 CFR 800.23(f) that provides the regulatory authority such discretion. Therefore, the Director is approving Missouri's proposed regulation.

(9) Self-bonding change to applicant's financial conditions. At 10 CSR 40–7.011(5)(D) 7, 8 and 9, Missouri has added requirements for notification of changes in financial conditions; for replacement of the self-bond; for issuance of a notice of violation and cessation of operations to the permittee for being without bond coverage; and forfeiture of the self-bond if the permit is revoked. The State's regulations are similar to the corresponding Federal regulations at 30 CFR 800.23(g). One exception is that upon notification that the financial condition of the permittee or third party guarantor no longer meets the criteria required for self-bonding status, the State immediately must issue a notice of violation against the operator and require the bond to be replaced within a 60 day period, whereas the Federal regulation allows a 90 day period to post an alternative bond but does not require that a notice of violation be issued. The Missouri regulation places a shorter time frame for replacement of a bond and therefore is no less effective than the Federal regulation requirements. The Director is therefore approving the proposed regulation.

2. 10 CSR 40–7.021 Duration and Release of Reclamation Liability

(a) *Criteria and Schedule for Release of Reclamation Liability.* (i) *Phase I release qualifications.* At 10 CSR 40–7.021(2), Missouri proposes to delete the reference to "pit reclamation" at paragraph (2)(A) and revise the regulation to provide that "an area shall qualify for release of Phase I bond liability upon completion of backfilling and grading, topsoiling and initial seeding of the disturbed area." The counterpart Federal regulation at 30 CFR 800.40(c)(1) includes a similar requirement for Phase I bond release but additionally requires the permittee to complete drainage control in accordance with the approved reclamation plan. At Finding B.1.(b) of this notice, a discussion of Missouri's definition of "Phase I reclamation" at RSMo 444.805(15) is provided. "Phase I reclamation" at RSMo 444.805(15) is defined in the same manner as stated in the regulation here. As discussed in that Finding, Missouri identified other areas of its regulations that the State felt assured that drainage controls would be in place prior to Phase I bond release. The Director found Missouri's clarification to be less stringent than the Federal program requirements. For the same reasons stated in Finding B.1.(b) of this notice, Missouri's requirements for Phase I bond release in its regulations are less effective than the Federal program requirement.

In an October 10, 1990, submittal to OSM, Missouri has proposed changes to its regulations that address this issue. The Director is therefore deferring his decision on this issue to that future rulemaking action.

(ii) Phase II release qualifications. At 10 CSR 40-7.021(2)(B)4, Missouri proposes to add the provision that in order to qualify for Phase II release, in part, a plan for achieving Phase III release must be approved for the area requested for release, and that the plan be incorporated into the permit. The Federal regulation at 30 CFR 800.40(c)(2) provides the Federal requirements for Phase II bond release. At these regulations, no requirement for a "plan" is imposed. While not required by the Federal regulations, the Director finds that Missouri's requirement for a plan to achieve Phase III release would assist reclamation and aid in the administration of its bond release program and is not inconsistent with Federal regulation requirements. The Director is therefore approving the proposed change.

For its Phase II release, Missouri additionally requires that (1) a permanent vegetative cover sufficient to control erosion is in place or an alternative erosion control practice as approved by the director has been implemented; (2) with respect to woodlands and wildlife areas, the stocking of trees and shrubs has been established; and (3) the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of the regulatory program or the permit. The

counterpart Federal regulation at 30 CFR 800.40(c)(2) provides the Federal requirements for Phase II bond release, including that (1) revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan; (2) the lands are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of SMCRA or the regulations; and (3) soil productivity for prime farmlands has been returned to equivalent levels of yield. The Missouri requirements differ from the Federal regulation requirements in that establishment of revegetation in accordance with the approved reclamation plan and the return of prime farmland soil productivity to equivalent levels of yield need not be met until the release of Phase III bond.

The Director finds that Missouri's bond release requirements for establishing vegetation in accordance with the approved reclamation plan and the return of prime farmland soil productivity levels at the Phase III rather than the Phase II level of bond release is less effective than the Federal requirements and is requiring Missouri to amend its program to be no less effective than Federal requirements.

(iii) Schedule for release. At 10 CSR 40–7.021(2)(D)1, Missouri proposes to add a provision that "Phase I bonds shall be released in full when Phase I liability is released, except that the total bond for a single mine shall not be below the equivalent of twenty (20) acres of bond for each acre of open pit or $10,000, whichever is greater, as required by 10 CSR 40–7.011(4)(D)." The Director has two concerns with this proposed requirement. First, the exception to a total Phase I bond release would appear to be in conflict with other areas of the Missouri program. At 10 CSR 40–7.001(1)(E) Missouri defines a Phase I bond to mean a performance bond conditioned on the release of Phase I liability. At RSMo 444.805(16) the State defines a Phase I reclamation bond as a bond filed by a permittee that may be released upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan. Neither definition clearly provides an exception to total release of the Phase I bond given at (D)1 if Phase I liability has been met. Secondly, Missouri's proposed provision bases the total release exception to a "single mine." The two definitions stated above do not limit the release of Phase I liability to a "single mine." The definition in Missouri's statute specifically states "permit area." At 10 CSR 40–7.011(4)(D), Missouri defines a single mine as "an organic mining operation occupying one (1) or more permit areas and utilizing equipment primarily maintained at common locations." As legal instruments, most bonds are drafted in such a manner as to limit liability to specific permits or subunits of a given permit, not an entire mine that may contain multiple permits. It is therefore questionable if Missouri could require that the reclamation bond liability of one permit be passed on to that of another permit even though such permits are located at a common mine. As proposed, Missouri's ABS holds the permittee responsible for Phase I bond liability and the CMLR Fund responsible for Phase II and III bond liability. Missouri's initial bond determinations are based on a permit-by-permit basis, not a total mine basis. To introduce a bond release approach that differs from that used in bond determination, introduces an inconsistency in the program that needs to be clarified. The Director is not approving the proposed language and is requiring Missouri to (1) clarify that the exception to Phase I bond release of its ABS as proposed here is not in conflict with other areas of its program and (2) either assure that each acre in a permit is covered by sufficient bond in and of itself or to the extent that any permit bonded acreage relies on a different and separate bonded permit acreage, provide a legal review and opinion that bond agreements can impose the liability of a bond for one permit area on to that of another, separate permit area.

(iv) Bond release percentages. Missouri proposes to add provisions at 10 CSR 40–7.021(2)(D)2 that specify the percentages of the bond amount to be released after completion of each of the three phases of reclamation. For full cost bonds, the State regulation states that "sixty percent (60%) shall be released when phase I liability is released, eighty-five percent (85%) released when Phase III liability is released, and one hundred (100%) released when Phase II liability is released." The counterpart Federal regulations at 30 CFR 800.40(c) are somewhat discretionary with respect to the percentages of bond amount that may be released. The Federal regulations at 30 CFR 800.40(c) allow the regulatory authority to release up to 60 percent of the total bond amount at the completion of Phase I. The amount that may be released at the completion of Phase II is based upon a recalculated bond amount to determine the amount needed to reestablish revegetation by a third party should the Phase II reclamation fail. The Federal rules do not allow mandatory release of fixed percentages of the bond amount at the completion of phases of reclamation. Section 519(b) of SMCRA requires the regulatory authority to consider the degree of difficulty to complete the remaining reclamation; whether water pollution is occurring, and if so, the cost to abate this; and the costs for a third-party to reestablish revegetation should be necessary following a Phase II release. As discussed in the **Federal Register** (44 FR 15122) March 13, 1979, since the regulatory authority is required to conduct this review, "* * * the bond release schedule and percentages cannot be made mandatory upon the regulatory authority."

Missouri's regulations lack the requirement to determine the costs to abate any water pollution, and lack the requirement to determine the remaining costs of reclamation, including the costs to a third-party to reestablish revegetation. Therefore, the Director finds that the Missouri regulations at 10 CSR 40–7.021(D)2 are less effective than the Federal regulations at 30 CFR 800.40(c) and inconsistent with the requirements of SMCRA at section 519(b). Accordingly, the Director is not approving these provisions and is requiring Missouri to amend its program to be no less stringent than the requirements of SMCRA and no less effective than the requirements of the Federal regulations.

(v) *Release of liability for temporary structures.* Missouri proposes to remove the regulations previously codified at 10 CSR 40–7.021(2)(A)3 and (2)(C) that addressed release of Phase I and Phase II bond liability on temporary structures such as roads, sediment ponds, diversions, and stockpiles of soil and overburden; and combine these bond release requirements for temporary structures at newly codified 10 CSR 40–7.021(2)(D)3. The proposed language would require that bonds be retained on unreclaimed temporary structures on an acre for acre basis where Phase I bonds apply and on a reclamation cost estimate basis where full cost bonding applies. For the purposes of this paragraph, reclamation costs would be determined by the State director and would be based on the information provided in the reclamation plan. The Federal regulations at 30 CFR 800.40 provide requirements for the release of performance bonds but do not explicitly address unreclaimed, temporary structures. However, the Director finds that Missouri's proposed regulations are not inconsistent with the Federal regulations since they would ensure that sufficient bond was retained to ensure

reclamation of temporary structures. The Director therefore is approving the proposed language.

(b) *Procedures for obtaining release.* At 10 CSR 40–7.021(3) Missouri proposes to revise this provision to delete the reference to 10 CSR 40–7.021(2)(D), which is now a newly added paragraph pertaining to the schedule for release. Missouri's deletion of the reference to paragraph 7.021(2)(D) is consistent with the meaning of this provision at 10 CSR 40–7.021(3) that pertains to the criteria for release rather than the schedule for release. Therefore, the Director finds that this revised provision is no less effective than the Federal provisions at 30 CFR 800.40 and is approving the proposed change.

3. 10 CSR 40–7.031—Permit Suspension or Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies

Under the currently approved Missouri bond program, bond cannot be forfeited and CMLR Fund monies cannot be expended until the permit has been revoked. Proposed statutory changes in Missouri's bond program necessitated minor editorial changes to its regulations at 10 CSR 40–7.031. The primary changes of this nature were at 10 CSR 40–7.031(2)(B)3 and (3)(D) to add the term "guarantor of self-bonding" to the provisions referring to other providers of bonding; and at (2)(C) to require the commission to issue its findings of fact, conclusions of law and order when declaring the permit revoked. These changes improve the clarity of the Missouri regulations and do not render them less effective than the corresponding Federal regulations at 30 CFR 800.50 and 843.13. The Director is approving the proposed changes.

4. 10 CSR 40–7.041—Form and Administration of the Coal Mine Land Reclamation Fund

(a) *10 CSR 40–7.041(1), Payment of Assessments.* (i) *Bonding option participation schedules.* At 10 CSR 40–7.041(1)(A), Missouri proposes to modify its regulation to require that until September 1, 1993, every permittee pay an assessment into the CMLR Fund (Missouri's ABS). After September 1, 1993, participation in the ABS becomes voluntary; thereafter, payment into the fund will depend upon what bonding option the operator in Missouri elects to use. As discussed in Finding B.2. of this notice, such option can not be approved since Missouri did not demonstrate that a non-mandatory participation option in its ABS will allow it to continue to meet the requirements of 30 CFR 800.11(e). The Director is not approving this provision and is requiring Missouri to remove this provision or to demonstrate that its ABS will be solvent consistent with the requirements of 30 CFR 800.11(e).

(ii) *Payments into the ABS Fund.* The proposed regulation at 10 CSR 40–7.041(1)(B) and (B)1 would (1) allow the commission to reinstate payments into the Fund after September 1, 1993; (2) raise the assessment rate from 30 cents to 45 cents for the first 50,000 tons sold and 20 cents to 35 cents for the second 50,000 tons sold; and (3) set the assessment payment schedule. The reinstatement of payments has been previously discussed at finding B.5.(e) of this notice. As in that Finding, the Director is not approving Missouri's reinstatement of payments proposal and is requiring Missouri to modify the system to ensure that the Fund will be operated in a manner that meets the requirements of 30 CFR 800.11(e), which could be demonstrated by Missouri through an actuarial study showing its soundness and financial solvency. The change in tonnage fee rates has also been discussed in finding B.5.(b) of this notice. As discussed at that Finding, the Director noted that fixed rate tonnage fees have not been demonstrated sufficient to generate the income needed to ensure a solvent ABS that meets the requirements of 30 CFR 800.11(e). The schedule for payment provides direction for the administration of the Missouri program and the Director finds the provision is not inconsistent with Federal regulation requirements. While the Director is approving the proposed framework for the payment of assessments, it is conditioned upon a demonstration that the revenues generated will assure that the ABS can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

(iii) *Lump sum buy-out option.* Proposed regulations at 10 CSR 40–7.041(1)(B) 3, 4, 5 and 6 incorporate the statutory requirements of RSMo 444.965.3 for a lump sum buy-out of the CMLR Fund, where a permittee elects not to participate or decides to withdraw after initially participating prior to September 1, 1993. More specifically, at (B)3 Missouri proposes to require that permittees who file full-cost bonds before September 1, 1993, pay a lump sum assessment. The sum shall be related to the company's projected average annual coal production for the years September 1, 1988, through September 1, 1993. The regulations then establish the amount of the lump sum payment, varying from $30,000 to a maximum of $125,000 based on projected average annual coal production of 0 to 100,000 tons. At (B)4, Missouri would establish that lump sum payments shall be due on the date the permittee files a full cost bond. At (B)5, the proposed regulations would allow a permittee, who pays a lump sum, a refund of any of the regular assessments that a permittee paid since January 1, 1988. Finally the proposed regulation at (B)6 would require that any permittee which receives its first permit and files a full cost bond after September 1, 1988, but before September 1, 1993, pay a percentage of the assessment commensurate to the percentage of time its permit is effective between those dates.

No counterpart Federal regulations exist for the above State proposal. As discussed in Finding B.5.(c) of this notice, the "buy out" feature of Missouri's bonding program is proposed to allow a transition in order to put in place the two-option bonding approach. The Director does not view such transition to be inconsistent with the Federal program requirements. However, no relationship has been shown by Missouri that the lump sum buy-out amount has anything to do with the ABS liabilities and its ability to meet the Federal requirements at 30 CFR 800.11(e). Therefore, as discussed in Finding 5.B.(c), the Director is not approving the proposed option for buy-out since Missouri has not demonstrated that past defaulted liabilities will be met and that the CMLR Fund's financial stability is, and can be maintained on an actuarially sound basis to meet the requirements of 30 CFR 800.11(e).

(iv) *$7 million Fund ceiling.* The proposed regulation at 10 CSR 40–7.041(1)(C), requires permittees who file a Phase I bond to continue payment of monthly assessments of 45 cents and 30 cents per the first and second 50,000 tons produced, respectively, into the CMLR Fund until September 1, 1993, unless the CMLR Fund balance is more than $7 million, or $2,500 times the number of acres mined, but not released, at the end of a fiscal year, at which time assessments cease until reinstated as provided at 10 CSR 40–7.041(1)(E). The general adjustment of the CMLR Fund assessment rates has been previously discussed in finding, 5.(e) of this notice. In that finding the Director did not approve Missouri's proposed adjustment to the assessment rate because the State did not provide an explanation sufficient to assure that the adjustment would meet the Federal requirements of 30 CFR 800.11(e)(1). For the same reason, the Director is not approving Missouri's proposed language here and is requiring Missouri to amend its regulation in a

manner that is consistent with required changes it must make at RSMo 444.965.5.

(v) *Compensative assessment.* The proposed regulation at 10 CSR 40–7.041(1)(D) requires that persons obtaining a new permit after September 1, 1988, pay a compensative assessment regardless of the fund balance. The payments shall begin the month the permit is issued or when regular assessments ceased, and at the rate equal to the rate paid for regular assessments. Such assessments shall continue until the permittee has paid for the number of months assessments were in effect between September 1, 1988, and the month and year in which its first permit was received or until regular assessments are reinstated, whichever comes first.

The Director is approving the mechanism for compensative assessments but is concerned that Missouri's requirement for the compensative assessment has not been based on any relationship of what the Fund needs to be in compliance with 30 CFR 800.11(e). Therefore, the Director's approval is conditioned upon Missouri demonstrating that the amount this mechanism provides into the ABS is sufficient for the ABS to meet the requirements of 30 CFR 800.11(e).

(vi) *Reinstatement of rates.* At 10 CSR 40–7.041(1)(E), Missouri proposes the requirement for reinstatement rates. Such rates would only apply to permittees who file a Phase I bond. They include at (E)2, that after September 1, 1993, when the Fund balance is below $7 million, the assessment established in subsection (1)(A)1 shall be reinstated at a rate of 25 cents for the first 50,000 tons and 15 cents for the second 50,000 tons. This rate shall remain in effect until the Fund balance reaches $7 million or until September 12, 1998, whichever comes first. At (E)3, the proposed regulation would require that after September 1, 1998, whenever the Fund is below $2 million, the assessment established in (1)(A)1 be reinstated at a rate of 30 cents and 20 cents for the first and second 50,000 tons produced respectively, until the Fund reaches $3 million, at which time the rate would revert back to 20 cents and 15 cents. At (E)4 and (E)5, the original regulations that provided administrative direction for notification of the applicant and payment schedule were modified to change the original term of "surcharge" to "reinstated" in order to provide clarity to the modified program regarding reinstatement rates.

The reinstatement of rates has been previously discussed in Findings B.5.(e) and B.5.(f) of this notice. In those findings, the Director did not approve Missouri's proposal to provide Fund ceilings as a "trigger" mechanism and is requiring Missouri to provide a system that will insure flexibility of the CMLR Fund as an ABS to operate in an actuarially sound manner in order to secure sufficient money, on an as needed basis, that it can meet the requirements of 30 CFR 800.11(e). Missouri must amend its regulations at 10 CSR 40–7.041(1)(E) in a manner that meets the requirements of 30 CFR 800.11(e) and is consistent with statutory requirements.

(b) *10 CSR 40–7.041(2); Fund Ceiling and Reimbursements.* The proposed regulation requires the LRC to make refunds from the CMLR Fund to permittees filing Phase I bonds and having valid permanent program permits at the end of the previous fiscal year, if, at the first LRC meeting following the end of a fiscal year, the CMLR Fund balance exceeds (1) the greater of $7 million or $2,500 times the number of acres mined but not released at any time prior to September 1, 1993; (2) $7 million at any time between September 1, 1993, and September 1, 1998; and (3) $3 million at any time after September 1, 1998. Permittees subject to compensative payments shall be refunded only the amount which is in excess of what is due in compensative payments. Each permittee shall be refunded a fraction of the excess amount, exclusive of penalties since September 1, 1988.

Changes made to the above regulation provide a mechanism for excess Fund balance disbursement. However, Missouri's basis for reimbursement by the use of Fund ceiling amounts has no relationship to actual Fund liabilities that might exist and therefore does not assure that the ABS will continue to meet the requirements of the Federal regulations at 30 CFR 800.11(e)(1). The Director is not approving Missouri's proposed changes and is requiring Missouri to provide a Fund reimbursement system that will assure its ABS will continue to function in a manner that meets the requirements of 30 CFR 800.11(e)(1).

(c) *10 CSR 40–7.041(4), Expenditure of Reclamation Fund Monies.* Missouri proposes some modification to this existing section as follows:

(i) *Expenditure of Fund monies.* At 10 CSR 40–7.041(4)(A)(1), Missouri proposes to add language that would clarify the function and use of its 40 percent and 60 percent CMLR Fund portions. More specifically, it provides that all monies within the Fund as of September 1, 1988, shall be allocated to the 40 percent Fund portion and applied to the reclamation of those permits that have been revoked by the commission prior to September 1, 1988. Also all monies assessed after September 1, 1993, shall be allocated to the 60 percent portion. The monies in the 60 percent Fund portion may be utilized for any aspect of reclamation except Phase I reclamation. Discussion of the 40 percent and 60 percent Fund breakdown has been provided in Finding B.4.(a) of this notice. In that finding the Director did not approve the 40 percent portion of the Fund (Fund A) and is requiring Missouri to amend its program in a manner that will ensure sufficient funds are available to fully reclaim defaulted land. The Director also did not approve the separation of Fund B from Fund A and is requiring Missouri to demonstrate that the Fund's generation of monies will be adequate to reclaim all defaulted lands and meet the requirements of 30 CFR 800.11(e). Missouri is required to amend its regulation here in a manner that is consistent with changes to its statutory requirements.

(ii) *Prohibited expenditure of Fund monies.* At 10 CSR 40–7.041(A)2, Missouri proposes to add the requirement that no reclamation Fund monies shall be expended for reclamation of areas bonded by full cost bonds. The Director finds that this language is provided to specifically clarify the intent of Missouri's alternative bonding options and is not inconsistent with Federal requirements. The Director is approving the proposed change.

IV. Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendments, please refer to the portion of this notice entitled "Submission of Amendment." No public comments were received nor was a request for a public hearing made.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.(h)(10)(i), comments were also solicited from various State and Federal agencies. Only those agency comments pertinent to the proposed changes to the bonding requirements proposed in the three amendments being considered in this rulemaking action are being discussed.

Region VII of the United States Environmental Protection Agency (EPA) provided several comments in a letter dated February 27, 1989 (Administrative Record No. MO–421). They are:

At 10 CSR 40–7.011, a permittee without bond coverage is provided a period not to exceed 60 days to replace bond coverage. EPA was concerned if the 60 days meant calendar days or working days and if the 60 day period was excessive for non coverage. The 60 day period specified by Missouri is

associated with the issuance of a notice of violation (NOV). All specified periods of time associated with such notices are in calendar days not working days. With regard to 60 days being excessive, the comparable Federal regulation at 30 CFR 800.16(e)(2) requires that bond be replaced within a period not to exceed 90 days upon the incapacity of a bank or surety company. Missouri's regulation would actually establish place a more limited time for bond replacement than is required by Federal regulation. Therefore, Missouri's proposed regulation is not inconsistent with the Federal regulation requirements and is approvable.

At 10 CSR 40–7.041(1)(E) 2 and 3, EPA questioned why the CMLR Fund assessment reinstatement rate was based on tons of coal sold instead of tons of coal mined. There are no counterpart Federal regulations that address the structure of an ABS Fund and a related assessment system. The State has discretion to establish such systems. Missouri's choice to base fees on tons of coal sold versus tons of coal mined is therefore not in conflict with Federal program requirements and is an acceptable approach to assess fees.

At 10 CSR 40–7.041(4)(B)2, EPA expressed its concern that "subsidence" was not specially stated as an example of expeditious work that the commission could expend reclamation fund monies on before proceeds from bonds are expended or committed. While the Director agrees that the specific expression of subsidence would add clarity to Missouri's regulation, the Director does not view Missouri's language to exclude such activity from being eligible for reclamation Fund money expenditures. Missouri provides qualifying language that, "This work may include, but shall not be limited to, * * *" In addition, it states that expeditious work would include that "necessary to comply with the laws, regulations, conditions of the permit or reclamation plan." Based on the above language, the Director is convinced that, should subsidence be a problem, Missouri not only can address subsidence, but would be compelled to do so.

V. Director's Decision

The Director is approving or approving with conditions the proposed amendments as initially submitted by Missouri on July 8, 1988, and January 12, 1989, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations and identified in the codified portion of this notice under 30 CFR 925.15(n).

The Director is not approving certain provisions of the Missouri amendment, as codified at 30 CFR 925.16(f), for reasons set forth in findings: B.1.(b) and C.2.(a)(i), concerning Phase I bond release drainage control; B.2., B.5.(a), C.4.(a)(i) and (b)(iii), concerning bond filing options; B.3.(a), concerning fixed rate Phase I reclamation bond amounts and the open pit bond; B.3.(d), concerning the State approval of an ABS; B.4.(a) (i), (ii) and C.4.(c)(i), concerning use of the 40% portion and 60% portion of the CMLR Fund; B.4.(b), concerning Fund B expenditures; B.5.(c) and C.4.(a)(iii), concerning the buy-out option; B.5. (e) and (f), concerning CMLR Fund adjustment and Fund ceilings; C.1.(a)(i), concerning the definition of self-bonding; C.1.(d) (i), (ii), (iii), (iv) and (vi), concerning fixed rate bond amounts, open pit bond and full-cost bond adjustment; C.2.(a)(iii), concerning schedule for bond release; C.2.(a)(iv), concerning mandatory fixed percentage bond release rates; C.4.(a) (iv) and (vi), concerning Fund balance caps; and C.4.(b), concerning Fund ceiling and reimbursements.

Additionally, the Director is approving some provisions with the condition that Missouri provide certain demonstrations as set forth in findings: B.3.(b), concerning an operators bond liability; B.3.(e), concerning liability under a Phase I bond; B.5.(b), concerning initial CMLR Fund assessment rates; B.5.(d), concerning the CMLR Fund ceiling; C.1(b)(iv), concerning bond filing options and changes in filing options; and C.4.(a) (ii) and (v), concerning payment of assessments.

The Director is deferring his decision as set forth in findings B.1.(b) and C.2.(a)(i), concerning Phase I bond release drainage control requirements.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to the Director as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to an approved program are not enforceable by the State until approved by the Director. In oversight of the Missouri program, the Director will recognize only the statutory and regulatory provisions approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Requirements

1. *National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exception from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements: rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 29, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter of the Code of Federal Regulations is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (n) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(n) Portions of the amendments submitted to OSM on July 8, 1988, and January 12, 1988, are approved effective May 8, 1991. Revisions to the Revised Statutes of Missouri (RSMo) at section 444.805 (8) and (16), concerning definitions of full-cost bond and Phase I reclamation bonds; section 444.950.1, concerning a minimum bond at $10,000 per permitted operation; section 444.950.3, concerning self-bonding; section 444.960.1, concerning the establishment of a CMLR Fund. Revisions to the Missouri Code of Regulations (CSR) at 10 CSR 40–7.011(1)(E), (F) and (G), concerning the definitions of Phase I bond, full-cost bond and open pit; 10 CSR 40–7.011(4)(E), concerning full-cost bond liability; 10 CSR 40–7.011(4)(F), concerning pit size survey; 10 CSR 40–7.011(5)(A)4, concerning surety financial restrictions; 10 CSR 40–7.011(5)(B) 2 and 4, concerning certificate of deposit amount and issuing bank insurance; 10 CSR 40–7.011(5)(D), concerning the self-bonding program; 10 CSR 40–7.021(2)(B)4, concerning criteria and schedule for Phase II bond release of reclamation liability; 10 CSR 40–7.021(2)(D)(3), concerning release of bond for temporary structures; 10 CSR 40–7.021(3), concerning procedures for obtaining bond release; 10 CSR 40–7.031, concerning permit suspension or revocation, bond forfeitures and authorization to expend reclamation fund monies; 10 CSR 40–7.041(4)(A)2, concerning exclusion to Fund monies use.

(1) The following portions of the above amendments are approved with the condition that Missouri provide certain demonstrations: Revisions of RSMo at section 444.950.2, concerning the operator's bond liability; section 444.950.4, concerning liability under a Phase I bond; section 444.965.2, concerning initial CMLR Fund assessment rates; section 444.965.4, concerning the CMLR Fund ceiling. Revisions of Missouri regulations at 10 CSR 40–7.011(2)(C), concerning changes in bond filing options; 10 CSR 40–7.041 (1)(B) and (1)(B)1, concerning the assessment rate of payments; and 10 CSR 40–7.041(1)(D), concerning compensative assessments.

(2) The following portions of the above amendments are not being approved. Revisions of RSMo at section 444.805(15), concerning the definition of Phase I bond release; section 444.830.1, concerning bond filing options; section 444.950.1, concerning fixed rate Phase I reclamation bond amounts and the open pit bond; section 444.950.3, concerning approval of an ABS by the State only; section 444.960.5, concerning use of the 40% and the 60% portion of the CMLR Fund and Fund B expenditures; section 444.965.1, concerning the bond filing options; section 444.965.3, concerning the buy-out option; section 444.965.5 and 6, concerning CMLR Fund adjustment and Fund ceiling caps. Revisions of Missouri's regulations at 10 CSR 40–7.011(1)(C), concerning the definition of self-bonding; 10 CSR 40–7.011(2)(B), concerning bond filing options; 10 CSR 40–7.011(4) (A), (B), (C), (D) and (F), concerning fixed rate bond amounts, open pit bond and full-cost bond adjustment; 10 CSR 40–7.021(2)(A), concerning Phase I bond release criteria; 10 CSR 40–7.021(2)(D)1, concerning Phase I bond release and legal liability impact; 10 CSR 40–7.021(2)(D)2, concerning mandatory fixed percentage bond release rates; 10 CSR 40–7.041(1)(A), concerning bond option participation schedules; 10 CSR 40–7.041(1)(B) 3, 4, 5 and 6, concerning the lump sum payment schedule; 10 CSR 40–7.041(1)(C), concerning Fund balance caps; 10 CSR 40–7.041(1)(E), concerning reinstatement rates; 10 CSR 40–7.041(2), concerning Fund ceiling reimbursements; and 10 CSR 40–7.041(4)(A)1, concerning the 40% and 60% portions of the CMLR Fund.

(3) The decision on the following portions of the above amendment are being deferred. Revisions of RSMo section 444.805(12) and CSR 40–7.021(2)(A), concerning Phase I bond release drainage control.

3. Section 925.16 is amended by adding Paragraph (g) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(g) By July 8, 1991, Missouri shall amend its program as follows:

(1) At RSMo 444.830.1; 444.965.1; 10 CSR 40–7.011(2)(B); and 10 CSR 40–7.041(1)(A); demonstrate that the resulting financial aspect of the proposed optional participation by an applicant of either a full-cost bond or Phase I bond will ensure that the ABS can meet the requirements of 30 CFR 800.11(e) or remove this provision.

(2) At RSMo 444.950.1 and 10 CSR 40–7.011(4) (A), (B), (C) and (D) to ensure that the Phase I reclamation bond amounts will cover the cost of reclamation and maintain the flexibility of conventional bonds in all situations and that the open pit minimum bond will be sufficient to assure the completion of the required reclamation in all cases.

(3) At RSMo 444.950.2, demonstrate that the combination of bond liability between the operator's Phase I bond and the CMLR Fund bond will meet the requirements of SMCRA.

(4) At RSMo 444.950.3 and 444.830.3 to require the Secretary of the Interior's approval before adopting an alternative bonding system or delete the provision.

(5) At RSMo 444.960.1 to clarify how the CMLR Fund money may be expended.

(6) At RSMo 444.960.5 and 10 CSR 40–7.041(4)(A)1 to insure that the 40% Fund portion (Fund A) will provide sufficient funding to fully reclaim those sites forfeited prior to September 1, 1988, and demonstrate that the 60% Fund portion (Fund B) generation of monies will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

(7) At RSMo 444.965.2, .4, .5 and .6 and 10 CSR 40–7.041 (1)(B), (1)(C), (1)(D), (1)(E) and (2) to assure that the fee assessment structure of the CMLR Fund will insure that the Fund will operate in a financially solvent manner as required by 30 CFR 800.11(e).

(8) At RSMo 444.965.3 and 10 CSR 40–7.041(1)(B) 3, 4, 5, and 6; demonstrate that the buy out option would still allow the ABS to meet the requirements of 30 CFR 800.11(e)(1) or remove this provision.

(9) At 10 CSR 40–7.011(1)(C) to require both the permittee and corporate guarantor to execute the indemnity agreement for a self-bond.

(10) At 10 CSR 40–7.011(2)(A), to require that the performance bonds be conditioned upon the faithful performance of the Act, regulatory program, permit and reclamation plan.

(11) At 10 CSR 40–7.011(3) to require an operator to identify initial and successive areas of increments for bonding and specify the bond amounts for each; prohibit disturbance on succeeding increments, underground shafts, tunnels, or operations prior to acceptance of bond; and that the applicant must submit an incremental bonding schedule.

(12) At 10 CSR 40–7.011(4)(F), to require that the commission shall review the full-cost bond for adjustment, and add regulations that are no less effective than the requirements of the Federal regulations at 30 CFR 800.15 (b)(1), (b)(2), (c) and (d).

(13) At 10 CSR 40–7.011(5)(A)2 to restrict a surety cancellation to only those lands not disturbed and then only with prior consent of the regulatory authority.

(14) At 10 CSR 40–7.011(5)(A)8 to require an operator to begin reclamation immediately upon the issuance of a C.O. if a surety company is insolvent and the permittee has not replaced bond coverage within 60 days.

(15) At 10 CSR 40–7.011(5)(B)2 to require that a certificate of deposit for a self bond be made payable to the regulatory authority only, or assigned to the regulatory authority in writing and upon records of the bank.

(16) At 10 CSR 40–7.011(5)(D)(2)C to express the financial ratio values as actual ratios rather than decimal fractions.

(17) At 10 CSR 40–7.011(5)(D)2.D, to add the requirement that the accountant's audit or review opinion be prepared using generally accepted accounting principles.

(18) At 10 CSR 40–7.011(5)(D)5.A, to add the requirements that the third party non-corporate guarantor also execute the indemnity agreement; that the applicant and guarantor must both sign the indemnity agreement; that an affidavit be submitted with the indemnity agreement attesting to its validity under applicable Federal and State laws; that the applicant, parent or non-parent corporate guarantor be required to complete the approved reclamation plan or pay the regulatory authority to complete the reclamation plan; and that the indemnity agreement shall operate as a judgment when under forfeiture.

(19) At 10 CSR 40–7.021(2)(B) to require that vegetation be established in accordance with the approved reclamation plan at the Phase II level and that prime farmland soil productivity yield levels be met at the Phase II level of bond release.

(20) At 10 CSR 40–7.021(2)(D)1. to clarify that its Phase I bond release for an ABS is consistently defined and used through out its program and to provide a legal opinion of its Phase I reclamation bond release and bond coverage liability.

(21) At 10 CSR 40–7.021(2)(D)2. to remove mandatory fixed percentage bond release amounts and provide the flexibility required in the Federal regulations.

* * * * *

[FR Doc. 91–10674 Filed 5–7–91; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7–R]

DoD Freedom of Information Act Program Regulation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending this part to reflect administrative amendments and a recent U.S. District Court ruling in *Oglesby* v. *Department of the Army* that no record responses may be appealed. This document also amends the title from "DoD Freedom of Information Act Program" to "DoD Freedom of Information Act Program Regulation".

EFFECTIVE DATE: May 10, 1991.

ADDRESSES: Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), room 2C757, Pentagon, Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, telephone (703) 697–1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of information.

PART 286—[AMENDED]

Accordingly, 32 CFR part 286 is amended as follows:

1. The authority citation for part 286 continues to read as follows:

Pub. L. 99–570; secs. 1801–1804; Pub. L. 99–661, sec. 2328; 5 U.S.C. 552.

2. The title of part 286 is revised to read "DoD Freedom of Information Act Program Regulation"

§ 286.13 [Amended]

3. Section 286.13, paragraph (a)(5) introductory text is amended by changing "§ 286.12" to "§ 286.13" and paragraph (5)(i)(F) after the words "or litigation before any" by adding "Federal, state, or military court, as well as records that qualify for the"

4. Section 286.27 is amended by revising paragraphs (b)(2) through (b)(6) as follows:

§ 286.27 Initial determinations.

* * * * *

(b) * * *

(2) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.

(3) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(4) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(5) The request is withdrawn by the requester.

(6) The information requested is not a record within the meaning of the FOIA and this part.

* * * * *

5. Section 286.29(a) is amended by removing the last sentence and the period after the word "fees" and adding ", and for no record determinations when the requester considers such a response adverse in nature. Appeals of denials of Office of the Secretary of Defense and Joint Staff documents or fee waivers may be sent to the address in paragraph 2a of appendix B to part 286"

6. Appendix B to part 286 is amended by adding a new paragraph 2.n.; paragraph 3.g. is amended by changing "SOJ1–AG" to "SOJ6–SI (FOI Officer)"

Appendix B—[Amended]

* * * * *

2. * * *

n. Defense Finance and Accounting Service (DFAS). DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOI requests to Defense Finance and Accounting Service, Crystal Mall 3, room 416, Washington, DC 20376–5001 for records of its Headquarters, or if there is uncertainty as to which DFAS region may have records sought.

* * * * *

Appendix H—[Amended]

7. Appendix H to part 286 is amended by adding "Defense Finance and Accounting Service" at the end of the list.

Dated: May 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–10838 Filed 5–7–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11-91-04]

Drawbridge Operation Regulations; Mokelumne River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary drawbridge operation regulation for the Highway 12 drawbridge across the Mokelumne River east of Isleton, California (the Mokelumne River Bridge), to limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends. This temporary regulation is being established to reduce serious highway traffic congestion at the bridge. Since this action should accommodate all the needs of marine traffic expected to pass the bridge, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective on May 1, 1991 and terminates on October 31, 1991.

ADDRESSES: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, CA 94501-5100. The comments will be available for inspection and copying during normal work hours between 7:30 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437-3514).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. Immediate action is needed to prevent serious highway traffic tieups on Highway 12, the principal east-west connecting roadway in the California Delta. A Local Notice to Mariners has been issued. A similar regulation was implemented during the 1990 boating season and was found to improve overland transportation without significant effect on water transportation. During the time that regulation was in effect, The Coast Guard received only two comments about the regulation, one for and one against.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). This temporary regulation will have no appreciable consequences as it will not prohibit any vessels from using the waterway. Since there is little economic impact, a full regulatory evaluation is unnecessary, and the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Wayne R. Till, project officer, and Lieutenant Commander Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

Highway 12 is the main east-west highway in the Sacramento-San Joaquin River Delta in northern California. It crosses three major recreational waterways on drawbridges: The Sacramento River at Rio Vista, the Mokelumne River east of Isleton, and Little Potato Slough at Terminous. In the vicinity of the Rio Vista Bridge, it carries as many as 1,100 vehicles per hour on holiday weekends and has traffic backups as long as 8 miles. The new Little Potato Slough drawbridge is nearing completion and this summer the old drawbridge will be removed. The Coast Guard has authorized a 60 day closure of Little Potato Slough at the bridge to permit the safe removal of the old bridge. During that period, vessels will have to bypass the bridge by using the Mokelumne River or the Sacramento River. The additional vessel traffic will aggravate highway-marine traffic conflicts at the Mokelumne River Bridge and the Rio Vista Bridge.

Current regulations require the Mokelumne River Bridge to open on call from 6 a.m. until 10 p.m. during the summer. The temporary regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends. Those peak periods are from 10 a.m. to 2 p.m. Saturdays and 11 a.m. to 6 p.m. Sundays. Openings for commercial vessels are infrequent on weekends, and it is not safe for commercial vessels to stop in the narrow channel. Accordingly, commercial vessels are excluded from this regulation and will be provided openings upon signal.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.175 is amended by adding (a)(1) to read as follows:

§ 117.175 Mokelumne River.

* * * * *

(a) * * *

(1) During the period May 1, 1991 to October 31, 1991, the draw of the Mokelumne River Bridge, mile 3.0, shall open upon signal, as specified in the permanent regulations, except that during the following periods the bridge need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour: Saturdays, 10 a.m. until 2 p.m., Sundays, 11 a.m. until 6 p.m.

* * * * *

Dated: April 23, 1991.

J. G. Schmidtman,

U.S. Coast Guard Acting Commander, Eleventh Coast Guard District.

[FR Doc. 91-10750 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 11-91-05]

Drawbridge Operation Regulations; Sacramento River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of a citizens group in Rio Vista, CA, the Coast Guard is establishing a temporary drawbridge operation regulation for the Highway 12 drawbridge across the Sacramento River at Rio Vista, California (the Rio Vista Bridge), to limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and holidays. This temporary regulation is being established to reduce serious highway traffic congestion at the bridge. Since this action should accommodate all the needs of marine traffic expected to pass the bridge, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective on May 1, 1991 and terminates on October 31, 1991.

ADDRESSES: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, CA 94501-5100. The comments will be available for inspection and copying during normal work hours between 7:30 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437-3514).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. Immediate action is needed to prevent serious highway traffic tieups on Highway 12, the principal east-west connecting roadway in the California Delta. A Local Notice to Mariners has been issued. A similar regulation was implemented at the Mokelumne River Bridge during August-September 1988 and again from May-October 1990 and was found to improve overland transportation without significant effect on water transportation.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is little economic impact, a full regulatory evaluation is unnecessary. This temporary regulation will have no appreciable consequences as it will not prohibit any vessels from using the waterway. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Wayne R. Till, project officer, and Lieutenant Commander Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

Highway 12 is the main east-west highway in the Sacramento-San Joaquin River Delta in northern California. It crosses three major recreational waterways on drawbridges: The Sacramento River at Rio Vista, the Mokelumne River east of Isleton, and Little Potato Slough at Terminous. In the vicinity of the Rio Vista Bridge, it carries as many as 1,100 vehicles per hour on holiday weekends and has traffic backups as long as 8 miles. The new Little Potato Slough drawbridge is nearing completion and this summer the old drawbridge will be removed. The Coast Guard has authorized a 60 day closure of Little Potato Slough at the bridge to permit the safe removal of the old bridge. During that period, vessels will have to bypass the bridge by using the Mokelumne River or the Sacramento River. The additional vessel traffic will aggravate highway-marine traffic conflicts at the Mokelumne River Bridge and the Rio Vista Bridge. Under a separate rulemaking, the Coast Guard will restrict recreational vessel openings of the Mokelumne River Bridge during this same period.

Current regulations require the Rio Vista Bridge to open on demand. The temporary regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and major holidays. Those peak periods are from 2 p.m. until 6 p.m. Fridays and Memorial Day and Labor Day. Openings for commercial vessels are infrequent on weekends and holidays, and it is not safe for commercial vessels to stop in the narrow channel. Accordingly, commercial vessels are excluded from this regulation and will be provided openings upon signal.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.189 is amended by adding paragraph (d) to read as follows:

§ 117.189 Sacramento River.

* * * * *

(d) During the period May 1, 1991, to October 31, 1991, the draw of the Rio Vista Bridge, mile 12.8, shall open upon signal, except that from 2 p.m. until 6 p.m. on Fridays and Memorial Day and Labor Day, the bridge need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour.

Dated: April 23, 1991.

J.G. Schmidtman,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 91-10749 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD2-91-01]

Drawbridge Operation Regulations: St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule changes the regulations governing the opening requirements of the Chicago and Northwestern Railroad Drawbridge at Mile 17.3 of the St. Croix River (Hudson, WI), the Prescott Highway Drawbridge at Mile 0.3, and the Burlington Northern Railroad Drawbridge at Mile 0.2 (Prescott, WI). Currently these bridges open on signal from 1 March to 14 December, and with 24 hour advance notice from 15 December to last day of February. This change will extend the period during which 24 hour advance notice is required to 31 March—an extension of 1 month.

EFFECTIVE DATE: This regulation becomes effective on June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314–539–3724.

SUPPLEMENTARY INFORMATION: On January 25, 1991, the Coast Guard published a Notice of Proposed Rule Making in the **Federal Register** at 56 FR 2883. Interested persons were invited to participate in this rulemaking by submitting written views, comments, data, or arguments no later than March 11, 1991. One comment was received.

Drafting Information

The drafters of this regulation are Wanda G. Renshaw, Project Officer, and Lieutenant M. A. Suire, Project Attorney, 1222 Spruce Street, St. Louis, MO 63103–3823, 314–539–3727.

Discussion

The swing span of the Chicago and Northwestern Railroad Bridge at Hudson, Wisconsin, and the vertical lift spans of the U.S. 16–61 Highway Bridge and the Burlington Northern Railroad Bridge, both at Prescott, Wisconsin, presently open on signal except that from December 15 through the last day of February, the draws open on signal provided at least 24 hours notice is given. Navigation through these bridges consists mainly of recreational craft and an occasional commercial tow. The Chicago and Northwestern Railroad Bridge is located in a reach of the river that is frozen during the winter months. Because of infrequent requests to open the draw due to river and weather conditions, the Railroad originally requested that the dates during which 24 hours notice is required for opening the draw be changed to November 15 through March 31. As a result of comments received from a commercial operator, Chicago and Northwestern later amended their petition and requested that the advance notice period be revised to require 24 hours notice between December 15 and March 31. Bridge logs confirm that a total of six openings occurred at this bridge during the periods March 1 through 31 for the navigation seasons 1983 through 1989. In considering Chicago and Northwestern's request, the openings of the railroad and highway drawbridges at Prescott were also reviewed. Draw opening logs document that both bridges were opened a combined total of two times in 1989 and six times in 1990 during the period December 15 through March 31. This change will relieve the bridge owner of the burden of having a drawtender in attendance from March 1 through March 31, and still provide for the reasonable needs of navigation.

In addition to the foregoing, this change will reinsert two subparagraphs, and renumber existing subparagraphs, for the regulation governing the operation of the S36 bridge at Stillwater, Minnesota, Mile 23.4. These subparagraphs were inadvertently omitted from the regulation at subsection 117.1099 when the reorganized regulations for drawbridges were published in the **Federal Register** on April 24, 1984 (FR 17450). The single comment received from Burlington Northern Railroad, fully supports this rule.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612. It has been determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. This rule simply extends the advance notice period to March 31 for the occasional vessel that may require a bridge opening during the winter season.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review on the docket.

Economic Assessment and Certification

This rule has been reviewed under the provisions of Executive order 12291 and determined not to be a major rule. In addition, this rule is considered to be nonsignificant under the guidelines of DOT order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. Extending the advance notice period from the last day of February to March 31 is justified in view of the paucity of vessels requiring bridge openings during the winter season. Pursuant to 5 U.S.C. 601, *et seq.*, the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Final Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Part 117 is amended by revising § 117.667 to read as follows:

§ 117.667 St. Croix River.

(a) The draws of the Burlington Northern Railroad Bridge, Mile 0.2, and the U.S. 16–61 bridge, Mile 0.3, at Prescott, and the Chicago and Northwestern railroad bridge, Mile 17.3, at Hudson, shall open on signal; except that, from December 15 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15 Monday through Friday, except Federal holidays, from—

(i) 8 a.m. to 11 a.m., every hour on the hour;

(ii) 11 a.m. to 3 p.m., every hour and half hour;

(iii) 3 p.m. to 6 p.m., every hour on the hour;

(iv) 6 p.m. to 10 p.m., every hour ar[illegible] half hour; and

(v) 10 p.m. to 8 a.m., if at least two hours notice is given.

(2) From May 15 through October 15 Saturdays, Sundays, and Federal holidays from—

(i) 8 a.m. to 11 a.m., every hour and half hour;

(ii) 11 a.m. to 8 p.m., every hour on the hour;

(iii) 8 p.m. to midnight, every hour and half hour; and

(iv) Midnight to 8 a.m., if at least two hours notice is given.

(3) From May 15 through October 15, at any time for emergencies.

(4) From October 16 through May 14, if at least 24 hours notice is given.

(c) The draw of the Soo Line Railroad Bridge, Mile 40.7, at Otisville, need not be opened for the passage of vessels.

3. Part 117 is further amended by revising § 117.1099 to read as follows:

§ 117.1099 St. Croix River.

(a) The draws of the Burlington Northern Railroad Bridge, Mile 0.2, and the U.S. 16–61 bridge, Mile 0.3, at Prescott, and the Chicago and Northwestern railroad bridge, Mile 17.3, at Hudson, shall open on signal; except that, from December 15 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15 Monday through Friday, except Federal holidays, from—

(i) 8 a.m. to 11 a.m., every hour on the hour;

(ii) 11 a.m. to 3 p.m., every hour and half hour;

(iii) 3 p.m. to 6 p.m., every hour on the hour;

(iv) 6 p.m. to 10 p.m., every hour and half hour; and

(v) 10 p.m. to 8 a.m., if at least two hours notice is given.

(2) From May 15 through October 15 Saturdays, Sundays, and Federal holidays from—

(i) 8 a.m. to 11 a.m., every hour and half hour;

(ii) 11 a.m. to 8 p.m., every hour on the hour;

(iii) 8 p.m. to midnight, every hour and half hour; and

(iv) Midnight to 8 a.m., if at least two hours notice is given.

(3) From May 15 through October 15, at any time for emergencies.

(4) From October 16 through May 14, if at least 24 hours notice is given.

(c) The draw of the Soo Line Railroad Bridge, Mile 40.7 at Otisville, need not be opened for the passage of vessels.

Dated: April 29, 1991.

W. J. Ecker,

Rear Admiral (Lower Half), United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 91–10872 Filed 5–7–91; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Deceptive Solicitations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to implement the Deceptive Mailings Prevention Act of 1990, Public Law No. 101–524 (November 6, 1990). Effective May 5, 1991, the Act makes solicitations by nongovernmental entities, which imply a Federal Government connection, approval, or endorsement they do not actually have, nonmailable unless they are contained in certain publications or display prescribed disclaimers.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Ventresco, (202) 268–3085.

SUPPLEMENTARY INFORMATION: On March 29, 1991, the Postal Service proposed (56 FR 13097) to amend its regulations on nonmailable written, printed, and graphic matter, contained in part 123 of the Domestic Mail Manual, to implement the Deceptive Mailings Prevention Act of 1990 (Public Law No. 101–524, November 6, 1990). The Act added new subsections (f) and (g) to section 3001 of title 39, United States Code. The new subsections deal with any solicitation by a nongovernmental entity containing terms or symbols that reasonably could be interpreted or construed as implying a Federal Government connection, approval, or endorsement. If the soliciting entity does not have such connection, approval, or endorsement, the solicitation is nonmailable unless it: (1) Is contained in a publication the addressee has ordered, and is not on behalf of the publisher; or (2) displays prescribed disclaimers, both on its envelope or outside cover or wrapper, and on the face of the solicitation itself. The Act authorizes the Postal Service to regulate the manner of displaying the prescribed disclaimers to ensure that they are conspicuous and legible.

We received three written comments on the proposed rule. Two expressed support for it. One expressed support for its anti-deception purpose, but also expressed concern that it could be applied to the solicitations of legitimate organizations based solely on a word such as "American" or "National" in the organization's name, or a symbol such as an eagle in the organization's logotype. To prevent such an "extreme interpretation", the commenter suggested that the rule expressly exclude mere use of such words or symbols as a criterion for determining nonmailability. The commenter also suggested exempting solicitations for renewal of membership and additional contributions, as those already having joined or contributed would be unlikely to be deceived.

The Act did not authorize the Postal Service to create any additional category of exempt solicitation. Moreover, the commenter's concern about an "extreme interpretation" is not well founded. The Act and the implementing regulations require that a standard reasonableness be observed in determining whether any term or symbol could be interpreted or construed as implying a Federal Government connection, approval, or endorsement. If a solicitation were challenged by the Postal Service, this determination would be made in administrative proceedings according the solicitor due process, including notice and the opportunity for a hearing before the Postal Service Judicial Officer Department (39 CFR parts 952, 953).

The Drug and Household Substance Mailing Act of 1990, Public Law No. 101–493 (October 31, 1990), effective April 29, 1991, redesignated the new subsections 3001 (f) and (g) as (h) and (i). By so doing, it inadvertently negated the Deceptive Mailings Prevention Act provision which made the mailing of nonmailable deceptive solicitations actionable as a false-representation scheme, and *prima facie* evidence to support the Postal Service's issuing the remedial orders authorized by section 3005(a) of title 39, United States Code. The heading and section 123.421 of the proposed regulations are being amended to reflect these consequences.

Based on the proposed rule, and after careful consideration of the comments received, as described above, the Postal Service adopts the following amendments to part 123 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 123—NONMAILABLE MATTER—WRITTEN, PRINTED, AND GRAPHIC

2. Redesignate Domestic Mail Manual 123.42, 123.43, and 123.44 as 123.43, 123.44, and 123.45, respectively, and insert the following before them:

123.42 Solicitations Deceptively Implying Federal Connection, Approval, or Endorsement (39 U.S.C. 3001(h) and 3001(i); 39 U.S.C. 3005).

123.421 Prohibited Solicitations.

A solicitation by a nongovernmental entity that contains any term or symbol—including, but not limited to, a seal, insignia, or trade or brand name—that could reasonably be construed or interpreted as implying any federal government connection, approval, or endorsement is nonmailable unless it conforms to 123.422a, 123.422b, or 123.422c. Compliance with 123.422a, 123.422b, or 123.422c will not avoid violation of 39 U.S.C. 3005 if the solicitation or accompanying information misrepresents a material fact such as the nature, value, quantity, quality, or efficacy of the products or services offered for sale, or of the activities of an organization asking for information or monetary contributions.

123.422 Permitted Solicitations.

A solicitation by a nongovernmental entity containing any term or symbol that could reasonably be construed or interpreted as implying federal government connection, approval, or endorsement is mailable if it meets at least one of the three following conditions.

a. The solicitation is by a nongovernmental entity that actually has the federal government connection, approval, or endorsement reasonably inferable from the solicitation's terms or symbols.

b. The solicitation appears in a publication for which the addressee has paid or promised to pay a consideration or which the addressee has otherwise indicated he or she desires to receive, and the solicitation is not on behalf of the publisher of the publication.

c. The solicitation displays the notice required by 123.422c(1) on the envelope or outside cover or wrapper in which the solicitation is mailed, and one of the two notices required by 123.422c(2) on the contents. These notices must be printed in boldface capital letters of a color prominently contrasting with the background against which they appear. "Color prominently contrasting" excludes any color or intensity that ordinary photocopying cannot reproduce legibly. The color, which can include black, must be at least as vivid as any other color on the fact of the solicitation and its envelope, or outside cover or wrapper. The required wording, type size and style, and placement for the notices are as follows:

(1) *On the Envelope, Cover, or Wrapper.* The face of the envelope or outside cover or wrapper must bear the notice: THIS IS NOT A GOVERNMENT DOCUMENT. The letters for printing this notice must be as large, bold, and conspicuous as any other letters on the face of such envelope, cover, or wrapper, but never smaller than 12-point type. The notice must appear in the upper right quadrant, below the postage stamp or other postage indicia and above the address, and it must be surrounded by a clear space not less than ¼ inch wide (see exhibit 123.422c(1)).

(2) *On the Contents.* The solicitation mailed within the envelope, cover, or wrapper must bear at the outset on its face one of these two headline notices, depending on its purpose as indicated in parentheses:

(a) THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT (for the purchase of or payment for a product or service); (b) THIS ORGANIZATION HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT (for information or the contribution of funds or membership fees). The letters for printing these notices must be as large, bold, and conspicuous as any other letters on the face of the solicitation, but never smaller than 30-point type. The notice must be surrounded by a clear space at least ½ inch wide. The notice must not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or introduces, modifies, qualifies, or explains the prescribed text, such as "Notice Required by Law" (see exhibit 123.422c(2)). The notice must not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

BILLING CODE 7710-12-M

EXAMPLE

F.B.I.
P.O. Box 0000
Washington, DC 12345-6789

POSTAGE

THIS IS NOT A
GOVERNMENT DOCUMENT

MR E Z MARK
1 MAIN STREET
ANYTOWN XX 98765-4321

Exhibit 123.422c(1)

Note: Not drawn to scale.

EXAMPLE

F.B.I.
P.O. Box 0000
Washington, DC 12345-6789

THIS PRODUCT OR SERVICE HAS
NOT BEEN APPROVED OR ENDORSED
BY THE FEDERAL GOVERNMENT,
AND THIS OFFER IS NOT BEING
MADE BY AN AGENCY OF THE
FEDERAL GOVERNMENT.

Dear Mr. Mark:

Here is a truly incredible offer which a person of your astuteness will not want to pass up. Our company, Fascinating Business Incorporated, publishes a monthly report of little-known business information, to which you can now subscribe at the low, low annual rate of only etc.

Exhibit 123.422c(2)

Note: Not drawn to scale.

[FR Doc. 91-10835 Filed 5-7-91; 8:45 am]
BILLING CODE 7710-12-C

39 CFR Part 111

Nonmailability of Certain Household Substances, Pesticides, and Fragrance Advertising Samples

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to implement the Drug and Household Substance Mailing Act of 1990, Public Law No. 101–493 (October 31, 1990). This Act makes nonmailable: (1) Any unsolicited matter containing a "household substance" (as defined by section 2 of the Poison Prevention Packaging Act of 1970) which does not meet the Consumer Product Safety Commission's child-resistant packaging requirements; and (2) any fragrance advertising sample not prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to it. The amended regulations also provide that any "pesticide" (as defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act) must meet comparable child-resistant packaging standards set by the Environmental Protection Agency.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Hohbein, (202) 268–5309.

SUPPLEMENTARY INFORMATION: On March 7, 1991, the Postal Service proposed (56 FR 9664) to amend its regulations on nonmailable articles and substances, contained in part 124 of the Domestic Mail Manual (DMM), to implement the Drug and Household Substance Mailing Act of 1990 (Pub. L. 101–493, October 31, 1990). The Act added new subsections (f) and (g) to section 3001 of title 39, United States Code. Subsection (f) declares any matter which (1) is unsolicited by the addressee, (2) contains a "household substance" as defined by section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)), and (3) does not comply with the requirements for special child-resistant packaging (16 CFR part 1700) established for that substance by the Consumer Product Safety Commission (CPSC), to be nonmailable matter. Subsection (g) declares that matter which contains a fragrance advertising sample is nonmailable matter, unless the sample is sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample.

Section 1716 of title 18, United States Code, makes nonmailable any matter which may kill or injure another, or injure the mails or other property. It authorizes the Postal Service, however, to permit the mailing of any such matter which is not outwardly or of its own force dangerous or injurious to life, health, or property, under such regulations as the Postal Service shall prescribe as to preparation and packaging. Any "pesticide," as that term is defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), is subject to child-resistant packaging standards (7 U.S.C. 136w(a)(1), (c)(3); 40 CFR part 157) set by the Environmental Protection Agency (EPA), which are consistent with the CPSC standards cited above. In order to serve more comprehensively the child-protection purposes of new 39 U.S.C. 3001(f), the Postal Service proposed to exercise its authority under 18 U.S.C. 1716 to make nonmailable any pesticide (as defined by 7 U.S.C. 136(u)) which does not comply with the child-resistant packaging standards established by the EPA (40 CFR part 157).

We received twenty-two written comments on the proposed regulation of fragrance advertising samples. Nineteen of these were from individuals reporting personal ill effects from exposure to fragrance advertising samples. These persons all expressed concern that the proposed requirement for preparation of such samples would not ensure adequate public protection. They suggested, instead, that such samples either be required to be sealed in impervious wrappers, such as foil wrappers, or else be excluded from the mail regardless of their manner of preparation. An organization which commented also criticized the proposed requirement as providing insufficient protection, and advocated requiring the use of a foil seal, but did not advocate absolute exclusion of fragrance advertising samples from the mail.

The Act neither absolutely excludes fragrance advertising samples from the mail, nor authorizes the Postal Service to impose such an exclusion. It does exclude such samples from the mail if they are not "sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample[s]." The Committee on Post Office and Civil Service, House of Representatives, in its report on the Act (H.R. Rep. No. 101–578, 101st Cong., 2d Sess., at 2 (Sept. 26, 1990)) described the standards by which it wanted compliance with this preparation requirement to be determined. These standards, duly included in the proposed regulation, require that the sample be incapable of activation "except by opening a glued flap or binder, or by removing an overlying ply of paper." Samples which would allow exposure to the fragrance without one's having opened such a flap or binder or removed such an overlying ply would not be in compliance with the regulation and would be nonmailable. Accordingly, the proposed regulation does provide adequate protection of the public, with no need to specify that the flap, binder, or ply be made of foil, or to use the term "impervious wrapper".

One industry representative suggested changing "fragrance advertising sample" to "fragrance advertising insert" because: (1) The California statute (section 26470, California Health and Safety Code), whose standards underlie proposed section 124.395, uses the term "fragrance advertising insert", and (2) postal regulations exclude product samples as supplements in publications mailed at the second-class rate (429.112f(2), DMM). However, the Act uses the term "fragrance advertising sample", not "fragrance advertising insert." Moreover, the cited report on the Act uses the term "fragrance advertising sample" in describing the preparation standards to be adopted. The report uses the word "insert" only in noting that "new section 3001(g) of title 39 * * * should not affect existing mail classification rules, regulations, or practices as they relate to fragrance advertising sample inserts" (H.R. Rep. No. 101–758, *supra*, at 2, 3). The concern that use of the word "sample" would operate to prevent properly prepared "fragrance advertising samples" from being included in second-class publications is not well founded. Section 429.112f(2) provides that "[p]roducts and product samples are ineligible as supplements [to a publication with second-class entry]." However, a "fragrance advertising sample" is—according to the plain meaning of that term—a sample of the fragrance of a product, distributed for advertising purposes. It is neither the product, itself, nor a sample of the product, but merely a sample of the fragrance of the product. Therefore, the mere fact that such samples contained in second-class publications would be subject to the proposed regulation's preparation requirement would not convert a "fragrance sample" into a "product sample" excluded by 429.112f(2).

The same commenter also criticized the proposed regulation for not using the exact wording of the California statute to describe the standards derived from that statute. The proposed regulation substantively embodies the California statute's standards because the House Committee on Post Office and Civil

Service viewed them as standards which the Postal Service should adopt to carry out the legislative intent of the Act. Accordingly, the Postal Service adopted them specifically as formulated in the Committee's report (H.R. Rep. No. 101–758, *supra*, at 2). Another industry representative commented that it "earlier had the opportunity to comment on the language recommended by the Committee on Post Office and Civil Service that forms the basis of the Postal Service's proposed regulation", and that "[m]ajor manufacturers of fragrance samples have assured us that they are able to comply with these standards to ensure protection of the public against inadvertent exposure to fragrances."

We received two written comments dealing with both proposed sections 124.393 and 124.394, and one dealing only with section 124.394. One of the commenters asked whether labels required by nonpostal regulations would be required by the Postal Service's proposed regulations to be attached to or inserted in the package of the regulated matter. The proposed regulations contain no such requirement. If nonpostal regulations require such attachment or insertion of labels, however, the mere fact that the matter was being mailed would not absolve the mailer from satisfying the nonpostal requirement. As noted in 124.121, DMM, a mailer is responsible for complying with all applicable laws and regulations—both postal and nonpostal. The same commenter also expressed concern about how the Postal Service would know a mailer was in compliance with the proposed regulations if there were no CPSC or EPA child-resistant packaging requirements applicable to particular matter it wished to mail. Postal regulations (124.123b, DMM) recognize that prospective mailers must have an opportunity to demonstrate to acceptance clerks that matter is mailable as packaged. As part of such a demonstration, a mailer might present evidence, including but not limited to advice or rulings from the CPSC or EPA, to explain that the matter to be mailed satisfies or is exempt from child-resistant packaging requirements. Another means which the prospective mailer could employ in seeking to demonstrate that the matter is mailable would be certificates of compliance similar to those authorized in proposed section 124.396. Moreover, a prospective mailer may appeal an adverse mailability decision from the postmaster to obtain a review of that decision by the general manager of the rates and classification center serving the particular post office, and may appeal the general manager's decision via administrative proceedings before the Postal Service's Judicial Officer Department (124.126, DMM).

Another commenter supported proposed sections 124.393 and 124.394 with the understanding—which is quite correct—that they would not expand the scope of the CPSC or EPA child-resistant packaging requirements, but would merely make matter not complying with those requirements nonmailable. This commenter, however, appeared to be under the impression that, if matter were not made nonmailable by 124.393 or 124.394 it would therefore be absolutely mailable. Such an impression would be incorrect. The mere fact that matter complies with 124.393 or 124.394 would not mean that it might not be nonmailable under another postal regulation. For example, if matter were contained in child-resistant packaging satisfying CPSC or EPA requirements, but the matter constituted a Class A poison, it would be nonmailable under 124.36b, DMM. This same commenter also appeared to believe, incorrectly, that 124.394 applies only to unsolicited mailings. No such restriction was included in the proposed regulation, and its protection for children applies to solicited as well as unsolicited matter. Section 124.393 is limited to "matter which is unsolicited by the addressee" because the Act expressly imposed that limitation.

The third commenter expressed support for proposed 124.394, but suggested that its wording could be changed to make clearer that it is not intended to expand the EPA's child-resistant packaging requirements. We agree with this suggestion and, accordingly, are making clarifying changes in the wording.

In 124.393, the parenthetical citation to the codification of section 2 of the Poison Prevention Packaging Act of 1970 is being corrected.

Based on the proposed rule, and after careful consideration of the comments received, as described above, the Postal Service adopts the following amendments to part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

Lists of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. After 124.392 add the following:

124.393 Household Substances (39 U.S.C. 3001(f)).

Any matter which is unsolicited by the addressee, contains a "household substance" as defined by section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)), and does not comply with the requirements for special child-resistant packaging established for that substance by the Consumer Product Safety Commission (16 CFR part 1700) is nonmailable.

124.394 Pesticides (18 U.S.C. 1716).

Any matter which contains a "pesticide" as defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), and does not comply with child-resistant packaging standards established by the Environmental Protection Agency which are applicable to that particular matter (40 CFR part 157) is nonmailable.

124.395. Fragrance Advertising Samples (39 U.S.C. 3001(g)).

Any matter which is otherwise acceptable in the mails, but which contains or includes a fragrance advertising sample, is nonmailable unless the sample meets the following requirement: It must be sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample. A sample will be deemed to meet this requirement if it employs paper stocks with a maximum porosity of 20 Sheffield units or 172 Gurley-Hill units treated exclusively with microencapsulated oils and is produced so that it cannot be activated except by opening a glued flap or binder, or by removing an overlying ply of paper.

124.396 Certificates of Compliance.

Customers offering matter for deposit in the mail, which would be nonmailable under 124.393, 124.394, or 124.395 but for compliance with the specified packaging and preparation requirements, may submit an accompanying written statement certifying that the matter is packaged or prepared in accordance with the applicable standards. The certifying statement may be made on the customer's letterhead, on a bulk mailing

statement, or as a notice on the exterior of each item offered for mailing.

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-10836 Filed 5-7-91; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300208A; FRL-3872-9]

RIN 2070-AB78

Calcium Hypochlorite and Chlorine Gas; Exemptions from Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with a previously announced policy, EPA is establishing exemptions from the requirement of a tolerance for residues of calcium hypochlorite and chlorine gas when applied preharvest or postharvest in solution to raw agricultural commodities.

EFFECTIVE DATE: This regulation becomes effective May 8, 1991.

ADDRESSES: Written objections, identified by the document control number [OPP-300208A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Walter C. Francis, Acting Product Manager (PM) 32, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)-557-3964.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 11, 1990 (56 FR 1153), EPA issued a proposed rule in accordance with EPA's document of February 1986, entitled "Guidance for the Registration and Reregistration of Pesticide Products Containing Sodium and Calcium Hypochlorite as the Active Ingredient," which concluded that under the Federal Food, Drug, and Cosmetic Act EPA is required to establish certain tolerances or exemptions from the need for tolerances for the use of calcium hypochlorite. In the same proposed rule EPA also proposed to exempt from the requirement of a tolerance residues of chlorine gas applied preharvest or postharvest in solution to raw agricultural commodities. The exemptions for calcium hypochlorite and chlorine gas do not apply to their use during food processing or as a food-contact surface sanitizer since these uses are under the jurisdiction of the Food and Drug Administration.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1054 is revised to read as follows:

§ 180.1054 Calcium hypochlorite; exemptions from the requirement of a tolerance.

Calcium hypochlorite is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities.

3. Section 180.1095 is revised to read as follows:

§ 180.1095 Chlorine gas; exemptions from the requirement of a tolerance.

Chlorine gas is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities.

[FR Doc. 91-10802 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9E3778/R1105; FRL-3847-5]

Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, also referred to as clomazone, in or on the raw agricultural commodity peppers. This regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: This regulation becomes effective May 8, 1991.

ADDRESSES: Written objections, identified by the document control number [PP 9E3778/R1105], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 716, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1990 (55 FR 49646), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3778 to EPA on behalf of the IR-4 Project, and the Agricultural Experiment Stations of North Carolina, Florida, New Jersey, Puerto Rico, Kentucky, Maryland, Georgia, and Arkansas.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity peppers at 0.05 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections/and or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objection must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justiy the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.425 is amended in the table therein by adding and alphabetically inserting the raw agricultural commodity peppers, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerance for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peppers	0.05
* * * * *	

[FR Doc. 91-10803 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-33

[FPMR Amendment E-269]

Public Utility Rate Cases; Responsibilities for Agencies Delegated Intervention Authority

AGENCY: General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The responsibilities are defined for agencies that receive delegations of authority from GSA to intervene in public utility rate cases. Also, reporting requirements are explained for these agencies. This action is necessary to improve GSA's monitoring and oversight of delegated rate cases. Adherence to these procedures will improve program effectiveness and will result in more timely reporting of rate case results.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John Harvey, Director, Rate Case Division at 202/501-0190 or FTS 241-0190.

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101-33.

Administrative practice and procedure, authority delegations (Government agencies), Government procurement, and utilities.

Accordingly, 41 CFR Part 101-33 is amended as follows.

PART 101-33—PUBLIC UTILITIES

1. The authority citation for part 101-33 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-33.2—Negotiation and Representation Involving Utility Services

2. Section 101-33.202 is revised to read as follows:

§ 101-33.202 Proceedings before regulatory bodies.

Pursuant to the provisions of section 201(a)(4) of the Property Act, executive agencies shall refer to GSA for consideration, all complaints and petitions involving public utility rates or services proposed to be brought before Federal and State regulatory bodies. Executive agencies seeking intervention authority shall submit their requests to GSA in writing. GSA will determine whether it will handle the proceedings, in cooperation with other interested agencies, or delegate the handling of the proceeding to the referring agencies, depending on which course of action is deemed to be in the best interest of the Government. Agencies delegated intervention authority shall be responsible for representing the interests of all Federal executive agencies in the utility's service jurisdiction, and shall give a diligent effort to identify those interests. To the extent that there is a divergence of interest between the agency receiving the delegation and other agencies served by the utility, the delegated agency shall promptly notify GSA of the situation. After completion of a case, the delegated agency shall provide a report that describes the results of the intervention effort; the report will include a copy of the Public Utility Commission's decision, a summary of the rates requested and approved by the Commission, an estimate of the impact on Federal executive agencies, and a discussion of the central issues of the case. The final report shall be provided to GSA within 90 days of the issuance of the Commission's decision.

Dated: April 12, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-10892 Filed 5-7-91; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498-1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and notice of 1991 fishery management measures; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an emergency interim rule and notice of 1991 fishery management measures to establish fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1991. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. The regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for treaty Indian and non-treaty inside fisheries and spawning escapement. Most of the management measures comport with the regulations implementing the 1984 framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California. Two deviations from the framework regulations also are included, necessitating implementation by an emergency interim rule.

DATES: *Effective:* Those management measures being implemented under 50 CFR part 661 are effective from 0001 hours Pacific Daylight Time (P.D.T.), May 1, 1991, until modified, superseded, or rescinded.

The amendments to part 661 are effective from 0001 hours P.D.T., May 2, 1991 until 2400 hours P.D.T., August 6, 1991.

Comments: Public comments will be accepted until May 17, 1991.

ADDRESSES: Comments on the management measures, including those being implemented under 50 CFR part 661 and those being implemented under emergency authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731-7415.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" fishery management plan for ocean salmon fisheries off the coasts of Washington, Oregon, and California (FMP). The framework FMP was approved in 1984 and has been amended three times since then (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989). Regulations at 50 CFR part 661 provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notice in the **Federal Register.**

This notice and emergency interim rule implement management measures for the 1991 ocean salmon fisheries as recommended by the Pacific Fishery Management Council (Council) at its April 9-12, 1991 meeting. Most of the management measures in this rule comport with the framework regulations implementing the FMP. Deviations from the framework FMP and implementing regulations, recommended by the Council and requiring implementation through use of the emergency rulemaking authority of section 305(c) of the Magnuson Act, also are included. The emergency interim rule will remain in effect for 90 days and may be extended for a second 90-day period.

Schedule Used to Establish 1991 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1990 Ocean Salmon Fisheries," summarizes the 1990 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1990. The second report, "Preseason Report I: Stock Abundance Analysis for 1991 Ocean Salmon Fisheries," provides the 1991 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1990 regulations or regulatory procedures were applied to the 1991 stock abundance.

The Council met on March 12-15, 1991, in Millbrae, California, to develop proposed management options for 1991. Three commercial and three recreational fishery management options were proposed for further analysis and public comment. These options presented various combinations of management measures designed to protect weak stocks and provide for ocean harvests of more abundant stocks of coho and chinook salmon. After the March Council meeting, the STT and staff economist prepared a third report, "Preseason Report II: Analysis of Proposed Regulatory Options for 1991

Ocean Salmon Fisheries," which analyzes the effects of the proposed 1991 management options. This report also was distributed to the Council, its advisors, and the public.

Public hearings on the proposed options were held April 2–3, 1991, in Olympia, Washington; Astoria and Coos Bay, Oregon; and Eureka and Sacramento, California.

The Council met on April 9–12, 1991, in Portland, Oregon, to adopt its final 1991 recommendations. Following the April Council meeting, the STT and staff economist prepared a fourth report, "Preseason Report III: Analysis of Council-Adopted Management Measures for 1991 Ocean Salmon Fisheries," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was distributed to the Council, its advisors, and the public.

Resource Status

Some salmon runs returning to Washington, Oregon, and California streams in 1991 are expected to be larger than in 1990. They include modest improvements in lower Columbia River spring chinook and many Washington coastal hatchery and Puget Sound natural coho salmon stocks.

Primary resource concerns are for Klamath River fall chinook; upper Columbia River spring and summer chinook; Snake River fall chinook; lower Columbia River fall hatchery chinook; Oregon Production Index area coho stocks destined for the Columbia River and the California and Oregon coasts, particularly Oregon coastal natural coho; and some Washington coastal and Puget Sound natural coho, particularly the Hood Canal and Skagit River stocks. Management of all of these stocks is impacted by interjurisdictional agreements among tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

Abundance of California Central Valley fall-run chinook stocks is expected to be 85 percent of the abundance observed in 1990. Though the Central Valley stocks have suffered from the extended drought in California, they remain relatively abundant and are predicted to meet their spawning goal range of 122,000 to 180,000 fish in 1991. While there is no preseason stock abundance projection for the Sacramento River winter-run chinook, it is a consideration in establishing ocean fishing regulations because the run is listed as threatened under the Endangered Species Act (ESA). NMFS issued a Biological Opinion regarding the effect on Sacramento River winter-run chinook from the commercial and recreational fisheries for salmon in the ocean, which recommended that the ocean salmon fisheries be managed so as not to increase the impact on winter-run chinook.

Klamath River fall-run chinook are the primary management concern off southern Oregon and northern California. In 1991 the abundance of Klamath fall-run chinook is expected to be at a record low of 123,800 age-3 and age-4 fish at the beginning of the fishing season. The spawning escapement goal for the Klamath River system is between 33 and 34 percent of the potential adult salmon with a minimum of 35,000 natural spawners (fish that spawn outside of the hatcheries). Due to the low projected abundance for 1991, the minimum natural spawner requirement is the controlling factor in the escapement goal for the Klamath system. The Bureau of Indian Affairs (BIA) informed the Council that it believes that the low stock abundance constitutes an emergency under the Klamath Fishery Management Council's harvest sharing agreement and that harvest rates contained in the agreement must be reduced for 1991. The BIA also informed the Council that it had reserved 12,000 fall-run chinook for subsistence and ceremonial fishing by the tribes on the river. Past practice for the inriver fishery managers has been to allocate 20 percent of the inriver harvest to recreational fishermen and 80 percent to tribal fisheries. The 1991 level of abundance requires that restrictive management measures be applied over a broader area of the coast than in 1990 to reduce the ocean catch and ensure that sufficient numbers of fall-run chinook return to the Klamath River for inriver fisheries and to meet the natural spawner floor of 35,000 adults.

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks that generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be considerably below 1990 levels, and below the long-term average. These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for a continuation of average to above average abundance as observed in recent years. These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will continue to be met.

Estimates of Columbia River chinook abundance vary by stock as follows.

(1) *Upper Columbia River spring and summer chinook.* Numbers of upriver spring chinook predicted to return to the river (61,900) are 38 percent below the 1990 run size of 99,400 fish, but 9 percent greater than the 1979–1984 average of 56,600 fish. The 1991 stock status reflects a significant decline from recent improvements in the depressed status of this stock. Recent increases (1985–1990) from the poor returns in the early 1980's have been the result of increases of hatchery stocks. The natural stock component, while showing some improvement, remains depressed. Ocean escapement is expected to be significantly below the goal of 115,000 adults counted at Bonneville Dam. Upriver spring chinook are affected only slightly by ocean harvests off Washington and Oregon. Expected ocean escapement of adult upriver summer chinook is based on the previous 3-year average of ocean escapements (28,400). The 1991 stock status remains extremely depressed, with ocean escapement being about 64 percent below the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon. However, concern that harvest rates on upriver spring and summer chinook stocks within Council authority do not increase still was a major factor in determining total allowable impacts in Council fisheries for 1991.

(2) *Lower Columbia River spring chinook.* Lower river spring chinook returns are projected to be 110,000 fish, 16 percent below the 1990 run of 130,600 fish, but 69 percent greater than the 1980–1984 average return of 65,000 fish. Lower river spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon, Oregon.

(3) *Columbia River fall chinook.* Four distinct fall chinook stock units initially were identified, and recently a fifth stock unit has been added, as follows.

(a) Upriver bright fall chinook ocean escapement is expected to be about 90,000 adults, 42 percent below the 1990 return of 156,100 adults, and 19 percent below the average return of 111,700 adults. The escapement goal for upriver bright fall chinook is 40,000 adults above McNary Dam. This stock has a northern ocean migratory pattern and contributes

less than 10 percent to Council area fisheries north of Cape Falcon.

(b) Lower river natural fall chinook ocean escapement is forecast at about 15,000 adults, 28 percent below the 1990 run size of 20,900 adults.

(c) Lower river hatchery fall chinook ocean escapement is forecast at a near record low of 75,000 adults, a 26 percent increase over the observed record low return of 59,700 adults in 1990. This stock has been declining steadily since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with lower river hatchery fall chinook being the single largest contributing stock. For 1990, lower river hatchery fall chinook is the primary resource constraint on ocean chinook harvests in the area north of Cape Falcon.

(d) Spring Creek hatchery fall chinook ocean escapement is projected to be about 55,000 adults, 204 percent greater than the 1990 return of 18,100 adults; the 1981–1985 average ocean escapement was 63,300 adults. The Spring Creek hatchery fall chinook stock has been rebuilding slowly since the record low return in 1987.

(e) In recent years, the mid-Columbia bright fall chinook stock has been increasing and is at a level worthy of consideration in management planning. These fall chinook are returns primarily from hatchery releases of bright stock in the area below McNary Dam, although some natural spawning in tributaries in that area is also occurring. Mid-Columbia bright fall chinook ocean escapement is projected to be about 45,000 adults, 14 percent below the 1990 return of 52,500 adults.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

The Oregon Production Index (OPI) is an annual index of coho abundance from Leadbetter Point, Washington, south through California. Oregon coastal and Columbia River coho stocks are the primary components of the OPI. For use beginning in 1988, the Council adopted revised estimation procedures that were expected to more accurately predict abundance of the following individual OPI area stock components: Public hatchery, private hatchery, Oregon coastal natural (OCN) for rivers and lakes, and Salmon Trout Enhancement Program. Prediction methodologies are described in the Council's "Preseason Report I: Stock Abundance Analysis for 1988 Ocean Salmon Fisheries." The 1991 OPI is 1,681,300 coho, 22 percent above the 1990 preseason forecast of 1,376,900 coho, and 83 percent above the 1990 observed level of 919,800 fish. The 1991 estimate includes 421,900 OCN coho, 31 percent above the 1990 preseason forecast of 321,000 fish, and 105 percent above the 1990 observed level of 205,400 fish. The 1990 spawning escapement of the OCN stocks was 84,100 fish, 48 percent below the spawning escapement goal of 161,000 adults.

Most Washington coastal coho stocks are expected to be more abundant than forecast in 1990, while stock abundance for Puget Sound coho stocks is expected to be slightly below the 1990 forecast. Ocean escapements expected from 1991 Council management measures are sufficient to provide for some inside area fishery harvest and still achieve spawning escapement goals or minimum acceptable levels for most Washington coastal and Puget Sound natural coho stocks.

Skagit River and Hood Canal natural coho escapements are the primary resource conservation constraints in both ocean and inside fisheries. Skagit River natural coho will not meet the spawning escapement goal after inside fisheries take place. State and tribal managers negotiated a preseason agreement on a 1991 Skagit River spawning escapement goal based on the predicted low stock abundances and socio-economic concerns of treaty Indian and nontreaty Indian fishermen. The State and the tribes did not agree on a 1991 spawning escapement goal for Hood Canal natural coho stocks, but both proposed fisheries regimes that result in less than the existing goal of 19,100 natural spawners in 1991.

Pink Salmon Stocks

Two major stocks comprise the pink salmon population available to the ocean fisheries in odd-numbered years. The Fraser River pink run is forecast at 11 million compared with the 1977–1989 (odd years only) average run size of 14 million. The preliminary preseason forecast for Puget Sound origin pink salmon is for 2.2 million; the 1977–1989 average is less than 2 million.

The Fraser River Panel of the Pacific Salmon Commission has jurisdiction over all U.S. pink and sockeye salmon fisheries in the ocean waters north of approximately Carroll Island, Washington, and the inside waters of the Strait of Juan de Fuca and Puget Sound. The Fraser River Panel has notified the Council that it intends to maintain jurisdiction over the ocean commercial troll harvest of pink salmon during the 1991 fishing season, as was the case in 1989. Thus, regulations promulgated by the Fraser River Panel may supersede the Secretary's regulations for the ocean harvest of pink salmon in 1991 between 48° N. lat. and the U.S.-Canada border between 3 and 200 nautical miles of shore.

Emergency Actions

Facing critical resource conservation and socio-economic problems in coastal salmon fisheries and communities, the Council recommended, at its April meeting, 1991 annual management measures, some of which require deviation from the FMP and its implementing regulations. The Council requested the Secretary to implement those 1991 management measures through the emergency authority of section 305(c) of the Magnuson Act. The Council's request for emergency changes is based upon the following:

(1) The 1991 annual management measures, including the emergency changes, represent several complicated, negotiated compromises among numerous groups. The compromises are intended to protect, to the extent possible, the weakest salmon runs, to provide the greatest opportunity for users to harvest the more abundant stocks, and to alleviate depressed economic conditions in the salmon fishing industry and its dependent communities;

(2) There was insufficient time to amend the FMP through the formal Magnuson Act procedures, between February, when preliminary biological data on the abundance of coastal salmon runs first became available to the Council, and the first of May, when the major commercial fishing seasons begin;

(3) Substantial evidence was presented to the Council that the preseason ocean abundance for OCN coho stocks has been grossly overestimated during the past 3 years leading to an ocean harvest rate that was too high and spawning escapement falling short of its goal. The Council did not have time to thoroughly review and revise the ocean estimation methodology between February, when concern on current Council procedures was addressed in Preseason Report I, and April, when ocean salmon seasons are established. Therefore, the Council has recommended a reduction in the ocean harvest rate from 53 percent, which is the allowable rate established by amendment 7 to the FMP, to 46 percent to compensate for what it believes to be a faulty ocean abundance predictor. Unless amended by this emergency rule, the ocean harvest rate

will be the 53 percent allowed under the FMP, and insufficient natural spawners are likely to escape the ocean fisheries to meet spawning needs; and,

(4) Unless amended by this emergency rule, the FMP establishes the spawning escapement goal for Hood Canal natural spawning coho as 19,100, the goal agreed to by the State of Washington and treaty Indian tribes under procedures in *U.S.* v. *Washington*. This year, both the State and tribes recognized that achieving the Hood Canal natural coho spawning escapement goal of 19,100 fish was not possible without unacceptable hardships to both non-treaty and treaty Indian fishermen. However, the parties could not agree on a revised goal. The Council adopted management measures that, in conjunction with anticipated restrictions on inside fisheries, would result in a projected spawning escapement of 16,000 Hood Canal natural coho. Emergency action is required to provide for a total allowable ocean coho catch in the area north of Cape Falcon that will not allow the attainment of the Hood Canal natural coho spawning escapement goal.

Therefore, NMFS is using its emergency authority under the Magnuson Act to add language to section IV.A. of the appendix to 50 CFR 661 and to replace language in footnote 4 to section IV.A. of the appendix to 50 CFR 661. Both emergency measures will be effective for an initial period ending 90 days from the date of publication of this emergency interim rule. The specific changes to the appendix are described below:

1. Reduction in OCN Ocean Harvest Rate From 53 to 46 Percent

The method of determining the OCN coho spawning escapement goal and harvest rate was adopted by the Council in 1986 and implemented by amendment 7 to the FMP (52 FR 4146, February 10, 1987). Amendment 7 established an OCN spawning escapement floor of 135,000 fish for estimated ocean abundances of 270,000 fish or less. The spawning escapement goal changes to 50 percent of the ocean abundance (50 percent harvest rate) for ocean abundances between 270,000 and 400,000 fish, and is capped at 200,000 fish for ocean abundances greater than 400,000 fish. The current ocean abundance predictor was adopted for use by the Council beginning with the 1988 fishing season following a detailed Council technical review in late 1987.

The ocean abundance predictor for OCN coho for rivers is based on a modified Ricker spawner/recruit model adjusted for ocean survival using Oregon Production Index public hatchery smolt to jack survival. The predictor for OCN coho for lakes production, which is approximately 5 percent of the total OCN stocks, is assessed independently based on the most recent 3-year average adult stock abundance.

Use of this OCN predictive methodology has had mixed results since 1984. The annual escapement goal, as calculated by amendment 7, was reached in 1984–1986, but not during the 1987–1990 4-year period. Despite a rigorous technical review of the OCN predictor by the Council in late 1987, the current predictor has consistently overestimated the actual ocean abundance. The excessive predictions were 133,000 fish (40 percent) in 1988, 143,300 fish (45 percent) in 1989, and 81,500 fish (36 percent) in 1990, for an average overprediction of about 40 percent. The 1990 OCN coho spawning escapement of 84,100 fish was significantly below both the 1990 calculated spawning escapement goal of 161,000 fish, and the escapement floor of 135,000 fish.

The STT expressed concern in its 1991 Preseason Report I over the extremely low escapement and the poor distribution of spawners by coastal regions. A second technical group, the Oregon Production Index Technical Team (OPITT), evaluated the OCN predictor for the 1991 season and concluded there was a high likelihood, as in 1990, of overestimating OCN ocean abundance and not reaching the 1991 spawning escapement goal or the OCN escapement floor of 135,000 fish.

Based on the current predictor, the OCN coho ocean abundance for 1991 is estimated to be 421,900 fish. In accordance with amendment 7, the spawning escapement goal would be 200,000 fish and the harvest rate would be 53 percent. However, the OPITT believes the actual ocean abundance is more likely to be closer to the 1988–1990 average abundance of 300,000 coho, which according to amendment 7, would require a 50 percent harvest rate and escapement of 150,000. In the absence of an emergency amendment, the harvest rate of 53 percent must be applied to the original abundance estimate that will drive the spawning escapement below the desired level if, as anticipated, the abundance estimate is too high. At this time, the Council is not able to implement a new predictive methodology that is more reliable than the current predictor. Therefore, the Council concluded that the harvest rate must be reduced in order to compensate for the overestimation bias, reverse the trend of failing to meet escapement goals, and better ensure protection of the stocks. The Council has recommended that the ocean harvest rate on OCN coho be established at 46 percent which is 7 percent below that required using the current predictor and 4 percent below the 50 percent harvest rate that would be required if the actual ocean abundance were 300,000 coho salmon. The Council believes that the additional conservatism regarding the harvest rate is warranted and is necessary to guard against the recent trend of overestimating the ocean abundance and underachieving spawning escapement goals.

2. Hood Canal Natural Coho Spawning Escapement Goal

The framework salmon FMP establishes some spawning escapement goals specifically and establishes others by incorporation. With respect to spawning escapement goals for Puget Sound coho salmon, the FMP incorporates by reference those goals agreed upon by the State of Washington and the treaty Indian tribes under the procedures of *U.S.* v. *Washington*. Under the agreement, the current spawning escapement goal for Hood Canal natural spawning coho salmon is 19,100 fish. The FMP also requires that the Council allow sufficient numbers of fish to escape the ocean fisheries to provide for some harvest in inside fisheries.

A new methodology used for estimating the total Hood Canal natural coho salmon run size for 1991 resulted in a significantly decreased run size prediction from the previously used methodology. Under the prior methodology, analysis of the 1991 ocean salmon fisheries recommended by the Council would have estimated the escape of sufficient number of coho salmon to meet the 19,000 fish spawning escapement goal. The new methodology more accurately reflects recent run sizes and is a conservative attempt to guard against the recent pattern of overestimating run sizes and not achieving escapement goals. However, the new methodology decreased the run size estimate to such a large extent that achievement of the spawning escapement goal is not possible in 1991 without almost complete closure of both non-treaty and treaty ocean and inside fisheries.

Based on the 1991 estimates of run size, the treaty tribes requested the Council to adopt an option with a 200,000 coho non-treaty total allowable ocean catch (TAC) which, combined with a restrictive set of inside fisheries proposals, would have resulted in a

spawning escapement of about 17,000 Hood Canal wild coho. The treaty tribes argued that this package, though not achieving the 19,100 fish natural spawning escapement goal, would provide an acceptable balance between harvest and escapement and would spread the burden of conservation equitably among all harvesters. The State of Washington proposed a non-treaty ocean TAC of 320,000 coho with a different package of inside fisheries restrictions that would have achieved between 15,000 and 16,000 natural coho spawning escapement. The State and non-treaty ocean harvesters argued that the gains to spawning escapement by reducing the non-treaty ocean fisheries from 320,000 to 200,000 coho were so small that the economic hardship and disruption that would result were not justified. Escapement projections based on computer modeling showed that with an identical set of inside fisheries restrictions, reduction of the non-treaty ocean TAC from 320,000 to 200,000 coho increased Hood Canal natural spawning escapement by only about 400 fish. Under the 320,000 proposed TAC, ocean fisheries under the Council's authority would harvest only 8 percent of the total Hood Canal wild run, inside fisheries would harvest 11 percent, Canadian fisheries outside U.S. waters 34 percent, and 46 percent would return to spawn.

In response to the conservation concerns of the treaty tribes and other users, the State of Washington has offered to participate with the tribes in a rebuilding plan for Hood Canal natural coho stocks. The plan offered by the State included commitments to adopt a management plan for the 1992 fisheries that will achieve the agreed natural coho escapement goal in 1992, adopt management objectives for the 1993 run based on the results of 1991 and 1992, and develop an action plan containing stock assessment methods, harvest management actions, habitat programs, and fish culture actions all designed to rebuild the Hood Canal natural coho stocks to the agreed-upon escapement level. The brood year escapement that will produce the 1992 Hood Canal run was 15,300 compared to the 11,000 escapement which produced the 1991 return. The 1993 run will be produced by the lowest spawning escapement of record, 6,800 fish in 1990. The Secretary is concerned about the long-term conservation of Hood Canal natural coho stocks and encourages the State, tribes, and Council to work together to implement the action plan proposed by the State or a similar plan.

The Secretary concurs with the Council's recommended non-treaty ocean TAC of 320,000 coho based on the following factors. First, the Secretary is satisfied that the spawning escapement anticipated this year will not harm the long-term productivity of the Hood Canal coho stocks. Second, management regimes in the control of the Council are a minor component of the fisheries that affect the Hood Canal stocks. Almost total closure of ocean and inside fisheries could allow achievement of the 19,100 spawning escapement goal, but the impact of the ocean fisheries is substantially less than the impact of the Canadian fisheries or the U.S. inside fisheries. Neither the tribal option nor the State of Washington option offered to the Council in April anticipated meeting the 19,100 escapement goal. Third, there is no biological evidence that the difference of 400 spawners that could be provided under an ocean TAC of 200,000 coho rather than an ocean TAC of 320,000 is sufficient in terms of conservation of the species to justify the economic hardships and dislocation that would result from the lower TAC. Under the Council's recommendation, treaty and non-treaty harvest sharing obligations can be met through the aggregate harvest of both hatchery and wild stocks of Hood Canal coho.

In order to provide for a Hood Canal natural spawning escapement less than the agreed-upon 19,100 coho salmon, the 1991 ocean management measures for coho salmon north of Cape Falcon must be implemented by emergency interim rule.

Management Measures for 1991

The Council adopted allowable ocean harvest levels and management measures for 1991 that are designed to apportion the burden of protecting weak stocks equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs.

South of Cape Falcon

In the area south of Cape Falcon, Oregon, management measures were adopted based primarily on concerns for the Klamath River fall chinook, the Sacramento River winter chinook, and the OCN coho. The greatest constraint on the ocean management measures was the low abundance of Klamath River fall chinook.

The long-term harvest sharing agreement adopted by the Klamath Fishery Management Council calls for an ocean harvest rate of 32.5 percent of the Klamath fall chinook, to be reduced proportionately with the harvest rate for the inside fisheries when necessary to achieve the spawning escapement goal. It also describes an emergency situation as one in which the allowable Indian subsistence harvest would be less than 12,000 fish, in which case the Klamath Council should conduct discussions to resolve the emergency. The Klamath Council did not provide a recommendation to the Pacific Council. To meet the minimum level of 35,000 naturally spawning adults, a total of 47,300 adult spawners, including hatchery fish, is required. In the river, the Bureau of Indian Affairs (BIA) and the tribal fisheries managers have declared their intent to take 12,000 fall chinook, and the recreational fishery may receive an allocation of 3,000 fish, based on the allocations in recent years. To meet the needs expressed by these groups, the Council attempted to configure ocean salmon fisheries to allow about 63,000 fall chinook to return to the Klamath River while providing sufficient opportunity to harvest chinook in the ocean from other river systems. An ocean harvest rate of 12 percent would have achieved this return to the river.

The Pacific Council offered for public comment ocean management options that included ocean harvest rates ranging from 20 to 12 percent on Klamath fall chinook. During its April meeting, the Council narrowed its consideration to ocean salmon fishing seasons that would result in ocean harvest rates for Klamath chinook ranging from 12 to 16 percent. At either of these harvest rates, the ocean recreational fishing season along nearly 200 miles of the southern Oregon and northern California coast must be reduced to 80 percent of its 1990 impact on Klamath chinook and the commercial fishery must be closed completely until September 1 to avoid catching chinook that will return to the Klamath River in 1991. The difference between the management measures required to achieve the two rates is in the extent of the restrictions on commercial fishing north and south of that area.

To achieve the 12 percent ocean harvest rate of Klamath chinook, the commercial salmon fishery would have had to be closed between Florence, Oregon, and Point Arena, California (more than 300 miles of the coast), except for a small quota and limited area fisheries after September 1. In addition, the areas further north between Cape Falcon and Florence, Oregon, and to the south between Point Arena and Point San Pedro, California, must be closed for extended periods during the season to save Klamath chinook. These measures would result in a harvest of 93,000 fewer total chinook as well as significant numbers of coho

salmon that would be lost due to restrictive chinook seasons and would return only 2,300 more fall chinook to the Klamath River. Fishing industry representatives also expressed concern that the extensive closed periods within the fishing season would cause the loss of markets for fresh troll-caught salmon, thereby lowering the value of the salmon that are landed.

Faced with this information, the Council recommended the seasons that result in a 16 percent ocean harvest rate on Klamath chinook. Because the harvest rate of Klamath chinook already has been reduced so greatly, any further savings can only be made by foregoing the opportunity to catch large numbers of fish from other chinook stocks to save an additional 2,300 Klamath chinook.

The ocean management measures adopted by the Council will return 60,300 fall chinook to the Klamath River. Of those fish, 47,300 will be required to meet the natural spawning escapement floor and hatchery needs (based on 26 percent hatchery fish in the run). The remaining 13,000 fish can be harvested in the river. The recent practice has been that the State of California and the BIA allocate 80 percent of the inriver harvest to the tribes and 20 percent to the recreational fishery. California's Department of Fish and Game indicated during the Council discussions that it would expect the recreational fishery in the river to receive the established allocation. If that allocation were made this year, the tribes would have a quota of 10,400 fall chinook, which is 1,600 less than their stated minimum need of 12,000 fish. The final quota for the recreational fishery in the Klamath River will be established by the State of California near the end of June.

The Council's goal in adopting this year's management regime was to allow the escapement goal to be met, while dividing the conservation burden equitably between ocean harvesters, the Indian fishermen, and the inside sport fishermen. The Council considered the needs expressed by the various user groups described above, and determined that the 16 percent ocean harvest rate most equitably apportioned the burden of conservation this year and achieves the goals of the FMP.

Commercial Troll Fisheries

Commercial troll fisheries during September and October in the area between the Florence South Jetty, Oregon, and Punta Gorda, California, will be limited to an overall guideline of 15,000 chinook between Florence South Jetty and Humbug Mountain, California, a 7,500 chinook quota between Sisters Rock and Mack Arch, and a 15,000 chinook quota between Trinidad Head and Punta Gorda. Troll fisheries in other areas south of Cape Falcon will not be limited by any chinook quotas. Troll fisheries south of Cape Falcon will be limited to an overall impact (catch and hooking mortality) quota of 390,000 coho and a preseason catch quota of 361,000 coho. There is a subarea impact ceiling of 271,000 coho south of Cascade Head, Oregon. A subarea catch of 90,000 coho in the subarea between Cape Falcon and Cascade Head may trigger a landing limit in that area matching that in effect, if required, for the area south of Cascade Head to Cape Arago until the overall coho quota is reached. A separate subarea catch quota of 5,000 coho south of Horse Mountain, California, is reserved preseason by deducting it from the overall preseason catch quota and subarea catch ceiling. This reserve will be available upon attainment of the overall catch quota or subarea catch ceiling minus the deduction. If either the overall quota or 75 percent subarea impact ceiling is exceeded before the fisheries can be closed, the overage will not be subtracted from the reserve. An inseason reallocation to the troll fishery of any portion of the south of Cape Falcon recreational quota projected to be in excess of sport fishery needs will be made no later than August 15.

From Point Arena to the U.S.-Mexico border, the commercial all-except-coho fishery will open May 1 through May 31, then reopen for all salmon June 1 through the earlier of September 30 or subarea coho quota, except that the area between Point Arena and Point San Pedro will close June 1 through June 7, June 13 through June 25, July 3 through July 10, and July 16 through July 31. If the subarea coho quota (5,000-fish reserve) is reached, the fishery will reopen for all salmon except coho and continue through September 30.

From Horse Mountain to Point Arena, the commercial troll fishery will open August 1 through the earlier of September 30 or subarea coho quota. As above, if the subarea coho quota (5,000-fish reserve) is reached, the fishery will reopen for all salmon except coho and continue through September 30.

The areas between Humbug Mountain and Sisters Rocks, Oregon, and between Punta Gorda and Horse Mountain, California, will be closed to commercial salmon fishing throughout the season. The all-except-coho fishery between Sisters Rocks and Mack Arch, Oregon, will open September 1 through the earlier of September 15 or 7,500 chinook quota, only within 0 to 6 nautical miles of shore. The fishery between Trinidad Head and Punta Gorda will open for all salmon September 1 through earlier of October 31 or 15,000 chinook quota, only within 0 to 6 miles of shore. Upon attainment of the coho quota, the seasons continue for all salmon except coho.

In the area between the Florence South Jetty and Humbug Mountain, the all-salmon fishery will open only between Florence South Jetty and Cape Arago June 24 through July 14, and August 1 through August 9 or coho quota; upon attainment of the coho quota, the fishery will reopen for all salmon except coho. In the entire area between Florence South Jetty and Humbug Mountain, the all-except-coho fishery will open September 1 through September 30 and October 8 through October 31 or the 15,000 chinook guideline. Between Cascade Head and the Florence South Jetty, the commercial troll season for all salmon except coho will open May 1 through June 23 with no more than four spreads per line June 1 through June 23, then reopen for all salmon June 24 through July 23 and August 1 through August 31 or coho quota without any restriction on spreads per line. Upon attainment of the coho quota, the fishery will reopen for all salmon except coho. In the area between Cascade Head and Cape Arago, when 80 percent of the coho quota or subarea catch ceiling south of Cascade Head is reached, landing restrictions may be implemented inseason during the remainder of the all-salmon season. Between Cape Falcon and Cascade Head, the all-except-coho fishery will open May 1 through June 30 with no more than four spreads per line in June, then reopen for all salmon July 1 through July 23 and August 1 through August 31 or coho quota without any restriction on spreads per line. Upon attainment of the coho quota, the fishery will reopen for all salmon except coho. When the estimated impact in this area reaches 25 percent of the overall coho impact quota south of Cape Falcon, landing restrictions may be instituted inseason to match those in effect, if any for the area between Cascade Head and Cape Arago. In the entire area between Cape Falcon and Florence South Jetty, the all-except-coho fishery will open September 1 through October 31.

Recreational Fisheries

The recreational fisheries south of Cape Falcon will be limited by an overall catch quota of 259,000 coho. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery no later than August 15. The fishery south of Humbug

Mountain does not close if the recreational coho quota is reached.

The all-salmon fishery between Point Arena and the U.S.-Mexico border opens on the nearest Saturday to March 1 through the nearest Sunday to November 1 with a two-fish daily bag limit. The conservation zone at the mouth of San Francisco Bay was closed March 2 through March 31 during 1991 and will be closed the nearest Saturday to March 1 through the nearest Friday to March 31 during 1992. This conservation zone was established to minimize the incidental harvest of Sacramento River winter-run chinook. Formal consultation with regard to the impacts that ocean salmon fisheries have on Sacramento River winter chinook may result in the modification of the 1992 opening dates and/or areas for this fishery.

The all-salmon fishery between Horse Mountain and Point Arena opens the nearest Saturday to February 15 through the nearest Sunday to November 15 with a two-fish daily bag limit; in 1992, this season will open on February 15.

The recreational all-salmon fishery between Humbug Mountain and Horse Mountain will open May 25 through September 30 with a two-fish daily bag limit, except only one may be a chinook; no more than six fish in 7 consecutive days; closed Tuesdays and Wednesdays of each week; and the conservation zone at the mouth of the Klamath River is closed August 1 through August 31. Additional days of the week may be closed inseason if the expected catch through the scheduled season closure exceeds 20,000 chinook based on an evaluation by the STT on or about July 10. The area between Trinidad Head and Punta Gorda will open for all salmon October 1 through October 31 with a two-fish daily bag limit, no more than six fish in 7 consecutive days, and only within 0 to 6 nautical miles of shore.

The recreational all-salmon fishery between Cape Falcon and Humbug Mountain will have two separate seasons, both of which will have a two-fish daily bag limit and no more than six fish in 7 consecutive days. The first season will open May 1 through May 26 only within the 27 fathom curve. The second season will open May 27 through July 31 and August 10 through September 15 or coho quota. The August 1 through August 9 closure may be rescinded inseason based on an evaluation by the STT on or about July 24 if the evaluation shows that the fishery will be able to continue until September 15 without the closure.

The STT analyzed the impact of the ocean commercial and recreational salmon seasons on the Sacramento River winter-run chinook and determined that the impact of the 1991 fisheries will be less than the impact of the 1990 fisheries. Therefore, these season and management measures comply the recommendations and incidental take conditions contained in the ESA section 7 Biological Opinion rendered by NMFS in March 1991.

North of Cape Falcon

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed upper Columbia River spring and summer chinook, lower Columbia River hatchery fall chinook, Hood Canal natural coho, and Skagit River natural coho. Ocean treaty and non-treaty harvests and management measures were established by the Council based on negotiations among fishery managers and user group representatives as authorized by the U.S. District Court in *U.S.* v. *Washington*, *U.S.* v. *Oregon*, and *Hoh Indian Tribe et al.* v. *Baldrige*. Not all fishery managers and user groups agreed with the management measures.

In the process of determining the total allowable chinook catch in the ocean north of Cape Falcon, the Council was concerned that the impacts on Snake River fall chinook salmon, the subject of a petition to list under the ESA, did not exceed prior years level of impacts. Analysis by the STT estimated about a 20 percent reduction in impacts under the Council's recommended 1991 non-treaty ocean TAC of 80,000 chinook salmon compared to 1990 impacts. As described earlier, the process of determining the non-treaty ocean coho salmon TAC was complicated by lack of agreement between certain Puget Sound tribes and the State of Washington.

All non-treaty commercial troll and recreational ocean fisheries will be limited by either an overall 80,000 chinook quota, or impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 320,000 (including coho hooking mortality associated with May/June chinook fisheries). The commercial troll fishery will be limited by overall quotas of 40,000 chinook and 87,000 coho.

Commercial Troll Fisheries

The commercial all-except-coho fishery from the U.S.-Canada border to Cape Falcon will open May 1 through the earlier of June 15 or 31,200 chinook guideline. The all-salmon fishery between the Leadbetter Point and Cape Falcon will open between August 10 through August 31 with guidelines of 19,500 coho and 2,000 chinook with fishing limited to a cycle of 3 days on and 3 days off. This fishery is subject to a possession and landing limit per opening of 150 coho and 10 chinook. The all-salmon fishery will continue in the area between Copalis Head and Cape Falcon September 1 through October 31 or a 32,500 coho quota or 3,000 chinook quota with a cycle of 4 days on and 3 days off. A possession and landing limit per opening of 200 coho is in effect, with the possibility of a chinook limit to be imposed inseason if necessary. The conservation zone at the mouth of the Columbia River is closed during all salmon seasons. The pink salmon fishery between the U.S.-Canada border and Carroll Island opens either August 16 or at a date to be determined by the Fraser River Panel of the Pacific Salmon Commission, and will close on September 15 with guidelines of 35,000 coho, 3,500 chinook, or 160,000 pink salmon. This season is limited to a cycle of 4 days on and 3 days off. Possession and landing limits are 80 coho and 10 chinook per opening. Fishing is limited to flashers with barbless, bare, blued or pink hooks or pink hoochies of 3 inches or less. The fishing area is open only seaward of the 100 fathom line.

Recreational Fisheries

Recreational all-salmon fisheries north of Cape Falcon are divided into four subareas. As in 1990, there is no all-except-coho season. The area between Leadbetter Point and Cape Falcon will open June 24 through September 15 with a 109,500 coho subarea quota. Within the subarea TAC an all-salmon season between the Red Buoy Line at the mouth of the Columbia River and Cape Falcon will open September 16 through September 26, 7 days a week with a subarea quota of 7,000 coho salmon and a two-fish bag limit. The area between the Queets River and Leadbetter Point will open June 24 through September 26 with a 88,400 coho subarea quota. The area between Cape Alava and the Queets River will open July 1 through September 26 with a 4,800 coho subarea quota. The area between the U.S.-Canada border and Cape Alava will open July 1 through September 26 with a 23,300 coho subarea quota. The fisheries in all subareas will be open Sunday through Thursday only with a two-fish daily bag limit and will close upon attainment of the subarea coho quota or overall chinook quota. The recreational fisheries will be limited by overall catch quotas of 40,000 chinook and 233,000 coho. Chinook guidelines for each subarea will provide a basis for inseason management measures to restrain chinook harvest but will not serve as quotas. The conservation zone

at the mouth of the Columbia River is closed throughout the season, except that rescission of the closure will be considered based on a projection of the STT, on or about August 1, showing sufficient chinook are available to allow completion of the coho allocation in the Columbia River subarea.

Treaty troll fisheries north of Cape Falcon are governed by quotas of 33,000 chinook and 80,000 coho salmon. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. The all-except-coho seasons will open May 1 and extend through June 30, if the chinook quota is not reached. The all-salmon seasons will open no earlier than July 1 and extend through the earliest of September 30 or chinook or coho quota. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, are 24 inches for chinook and 16 inches for coho.

The following tables and text reflect the management measures recommended by the Council for 1991 and, as specified, for 1992. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with requirements of the Magnuson Act and other applicable law including United States obligations to Indian tribes with treaty-secured fishing rights.

The following management measures are adopted for 1991 and, as specified, for 1992 under 50 CFR part 661.

BILLING CODE 3510-22-M

Table 1. Commercial management measures for 1991 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, D, and E which must be followed for lawful participation in the fishery.)

A. SEASONS, SUBAREA QUOTAS, AND SPECIES
(shaded areas represent closures)

Apr	May	June	July	August	Sep/Oct
U.S.-Canada Border					**U.S.-Canada Border**
	May 1 thru earlier of June 15 or chinook guideline of 31,200. All except coho. Conservation Zone 1, Columbia River mouth, is closed (C.3). See D.1.			Opens earlier of August 16 or recommendation of the Pacific Salmon Commission thru earliest of September 15 or guidelines of 35,000 coho or 3,500 chinook or 160,000 pink. Cycle of 4 days on/3 days off. All salmon. Possession and landing limit of 80 coho and 10 chinook per opening. Flashers with barbless, bare, blued or pink hooks or pink hoochies of 3 inches or less only. Open only outside 100 fathom line. See D.2.	
				Carroll Island	
					Copalis Head
				Leadbetter Point	September 1 thru earliest of October 31 or quotas of 32,500 coho or 3,300 chinook. All salmon. Cycle of 4 days on/3 days off. Possession and landing limit per opening of 200 coho (chinook limit may be imposed inseason). Conservation Zone 1, Columbia River mouth, is closed (C.3). See D.4.
				August 10 thru earliest of August 31 or guidelines of 19,500 coho or 2,000 chinook. All salmon. Cycle of 3 days on/3 days off. Possession and landing limit per opening of 150 coho and 10 chinook. Conservation Zone 1, Columbia River mouth, is closed (C.3). See D.3.	
Cape Falcon					**Cape Falcon**
	May 1 thru June 30. All except coho. No more than 4 spreads per line June 1 thru June 30.	July 1 thru July 23. All salmon thru coho quota (E.2), then all except coho. See D.5.		August 1 thru August 31. All salmon thru coho quota (E.2), then all except coho. See D.5.	September 1 thru October 31. All except coho.
Cascade Head					**Cascade Head**
	May 1 thru June 23. All except coho. No more than 4 spreads per line June 1 thru June 23.	June 24 thru July 23. All salmon thru coho quota (E.2), then all except coho. See D.6.		August 1 thru August 31. All salmon thru coho quota (E.2), then all except coho. See D.6.	September 1 thru October 31. All except coho.
Florence South Jetty					**Florence South Jetty**

Apr	May	June	July	August	Sep/Oct

Florence South Jetty — **Florence South Jetty**

June 24 thru July 14. All salmon thru coho quota (E.2), then all except coho. See D.6.

August 1 thru August 9. All salmon thru coho quota (E.2), then all except coho. See D.6.

September 1 thru earlier of September 30 or chinook guideline of 15,000. All except coho.

October 8 thru earlier of October 31 or balance of 15,000 chinook guideline. All except coho.

Cape Arago — **Cape Arago**

Humbug Mountain — **Humbug Mountain**

Sisters Rocks

Sept. 1 thru earlier of Sept. 15 or 7,500 chinook quota. All except coho. Open only 0 to 6 nautical miles of shore. See D.7.

Mack Arch

Trinidad Head

September 1 thru earlier of October 31 or 15,000 chinook quota. All salmon. Open only 0 to 6 nautical miles of shore. See D.7.

Punta Gorda

Horse Mountain — **Horse Mountain**

August 1 thru September 30. All salmon thru coho quota (E.2), then all except coho.

Point Arena — **Point Arena**

May 1 thru May 31. All except coho.

open 6/8 thru 6/12

open 6/26 thru 7/2

open 7/11 thru 7/15

Point San Pedro — **Point San Pedro**

June 1 thru September 30. All salmon thru coho quota (E.2), then all except coho. **Except closed between Point Arena and Point San Pedro on June 1-7, June 13-25, July 3-10, and July 16-31.**

U.S.-Mexico Border — **U.S.-Mexico Border**

B. MINIMUM SIZE LIMITS (inches)

	Chinook		Coho		Pink
	Total Length	Head-off	Total Length	Head-off	
North of Cape Falcon	28.0	21.5	16.0	12.0	none
Cape Falcon to Humbug Mountain	26.0	19.5	16.0	12.0	none
South of Humbug Mountain	26.0	19.5	22.0	16.5	none

Chinook not less than 26 inches (19.5 inches head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

C. GENERAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

1. Hooks - Single point, single shank barbless hooks are required.

2. Line Restriction - Off California, no more than 6 lines per boat are allowed.

3. Conservation Zone 1 - The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18′00″ N. latitude to 124°13′18″ W. longitude, then southerly along a line of 167° True to 46°11′06″ N. latitude and 124°11′00″ W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty, is closed.

4. Transit Through Closed Areas with Salmon on Board - It is unlawful for a vessel, which has been issued an ocean salmon permit by any state, to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

5. Landing Salmon in Closed Areas - Legally caught salmon may be landed in closed areas unless otherwise prohibited by these regulations.

6. Meeting Landing Restrictions - It is illegal to meet species ratio landing restrictions by including any salmon which have been previously landed.

7. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-salmon-except-coho fisheries in state waters.

D. POSSESSION, LANDING, AND SPECIAL RESTRICTIONS BY MANAGEMENT AREA

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, and the estimated time of arrival.

1. U.S.-Canada Border to Cape Falcon, May/June All-Except-Coho Season - The State of Oregon may require vessels landing fish from this fishery to the area south of Cape Falcon to notify the Newport office of the Oregon Department of Fish and Wildlife between 8 a.m. and 5 p.m. on the day of landing or the following weekday if such landing occurs on a weekend or outside office hours. The notification shall include the name of the vessel, port where delivery will be made and the number of chinook landed. Following any closure of this fishery, vessels must land and deliver the fish within 48 hours of the closure.

2. August/September Fishery North of Carroll Island - The fishery will follow a cycle of 4 days open and 3 days closed, continuing the cycle until reaching the earliest of September 15 or the coho, chinook, or pink harvest guideline. Each vessel may possess, land, and deliver no more than 80 coho and 10 chinook per open period. Vessels must land and deliver within the area or in adjacent closed areas. All salmon must be landed and delivered within 24 hours of each closure. The Fraser River Panel of the Pacific Salmon Commission intends to maintain jurisdiction over the level of ocean commercial harvest of pink salmon north of Carroll Island in 1991. The Panel is expected to set a harvest guideline of 160,000 pink salmon for this fishery. This fishery is open in an area of the EEZ north and west of the following coordinates: north of 48°00′15″ N. and west of a line from 48°00′15″ N., 125°19′15″ W. to 48°03′40″ N., 125°17′15″ W. to 48°07′45″ N., 125°11′15″ W. to 48°05′00″ N., 125°01′00″ W. to 48°13′00″ N., 124°57′30″ W. to 48°16′30″ N., 124°58′00″ W. to 48°23′00″ N., 124°50′00″ W. to 48°30′15″ N., 124°50′00″ W. This line generally follows the 100 fathom line except in the northernmost area.

3. Leadbetter Point to Cape Falcon, All-Salmon Season - The fishery will follow a cycle of 3 days open and 3 days closed, continuing the cycle until reaching the earliest of August 31 or the coho or chinook harvest guideline. Unless precluded by a harvest guideline, the open periods will be: August 10-12, August 16-18, August 22-24, and August 28-30. Each vessel may possess, land, and deliver no more than 150 coho and 10 chinook per open period. All salmon caught in the area must be landed and delivered in the area or in adjacent closed areas within 24 hours of each closure.

4. Copalis Head to Cape Falcon, All-Salmon Season - The fishery will follow a cycle of 4 days open and 3 days closed, continuing the cycle until reaching the earliest of October 31 or the coho or chinook harvest guideline. Unless precluded by a harvest guideline, the open periods will be: September 1-4, September 8-11, September 15-18, September 22-25, September 29-October 2, October 6-9, October 13-16, October 20-23, and October 27-30. Each vessel may possess, land, and deliver no more than 200 coho per open period. No restriction on chinook (limit may be imposed inseason). All salmon caught in the area must be landed and delivered in the area or in adjacent closed areas within 24 hours of each closure.

5. Cape Falcon to Cascade Head During All-Salmon Season - When the estimated impact (combined catch and hooking mortality) in this area reaches 25 percent of the overall coho impact quota south of Cape Falcon, landing restrictions may be instituted to match those in effect (if any) for the area south of Cascade Head to Cape Arago. If landing restrictions are in effect, all mixed loads of coho and chinook or coho-only loads must be landed and delivered within the Cape Falcon to Cape Arago area or in adjacent closed areas.

6. Cascade Head to Cape Arago During All-Salmon Season - When 80 percent of the coho quota or subarea catch ceiling south of Cascade Head is reached, landing restrictions may be implemented during the remainder of the all-salmon season. These restrictions may include chinook per coho ratios or single daily coho landing limits. These restrictions may be adjusted inseason to assure complete harvest of the quota. When landing restrictions are in effect, mixed loads of chinook and coho must be delivered within this management area (or adjacent closed area). All chinook in possession must be delivered with the coho. There are no restrictions on the place of delivery of chinook-only loads. Chinook and coho salmon possessed or landed in this management area may not be returned or transferred to any vessels except vessels licensed to buy salmon.

7. Sisters Rocks to Punta Gorda - All salmon caught in fisheries in this area must be landed and delivered within the area.

E. QUOTAS

1. Chinook and Coho Quotas North of Cape Falcon - All non-treaty troll and recreational ocean fisheries will be limited by either: (a) an overall 80,000 chinook quota or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 320,000 (including hooking mortality associated with May-June chinook fisheries). The troll fishery will be limited by overall quotas of 40,000 chinook and 87,000 coho. Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

2. Coho Quotas South of Cape Falcon - The troll fishery from Cape Falcon to the U.S.-Mexico border will be limited to an overall combined catch and hooking mortality impact of 390,000 coho. The overall preseason catch quota for this impact is 361,000 coho. There is a 75 percent subarea impact ceiling (catch plus hooking mortality) within the overall impact which allows a harvest of no more than 271,000 south of Cascade Head. A subarea catch of 90,000 coho in the area between Cape Falcon and Cascade Head may trigger a landing limit in that area to match that in effect (if any) for the area south of Cascade Head to Cape Arago until the overall coho quota is reached. A separate subarea catch quota of 5,000 coho will be reserved preseason for the troll fishery south of Horse Mountain by deducting it from the overall preseason catch quota and the subarea catch ceiling. The subarea catch-quota reserve will be available upon attainment of the overall catch quota or the subarea catch ceiling minus the 5,000 deduction. If either the overall quota or 75 percent subarea impact ceiling is exceeded before the fisheries can be closed, the overage will not be subtracted from the 5,000 coho reserve. An inseason reallocation to the troll fishery of any portion of the south of Cape Falcon recreational quota projected to be in excess of sport fishery needs will be made no later than August 15.

3. Chinook Quotas Between Sisters Rocks and Punta Gorda - There are two chinook quotas governing September and October troll fisheries of: (1) 7,500 chinook between Sisters Rocks and Mack Arch, and (2) 15,000 chinook between Trinidad Head and Punta Gorda.

Table 2. Recreational management measures for 1991 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery.)

A. SEASONS, SUBAREA QUOTAS, SPECIES, AND BAG LIMITS
(shaded areas represent closures)

Feb-Apr	May	June	July	August	Sep/Oct/Nov
U.S.-Canada Border					**U.S.-Canada Border**
			July 1 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 23,300. Open Sunday thru Thursday only. All salmon. 2 fish per day. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 2,000.		
Cape Alava					**Cape Alava**
			July 1 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 4,800. Open Sunday thru Thursday only. All salmon. 2 fish per day. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 200.		
Queets River					**Queets River**
		June 24 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 88,400. Open Sunday thru Thursday only. All salmon. 2 fish per day. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 21,200.			
Leadbetter Point					**Leadbetter Point**
		June 24 thru earliest of September 15 or overall chinook quota (D.1) or coho subarea quota of 109,500. Open Sunday thru Thursday only. All salmon. 2 fish per day. Conservation Zone 1, Columbia River mouth, is closed; closure may be rescinded based on STT evaluation on or about August 1 (C.2). Inseason management may be used to maintain season length and keep chinook catch within a guideline to be determined (D.1). September 16 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 7,000. Open 7 days per week. All salmon. 2 fish per day. Open only south of the Red Buoy Line. Chinook guideline to be determined (D.1).		
Cape Falcon					**Cape Falcon**
	May 1 thru May 26. All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days. Open only within the 27 fathom curve (C.5).	May 27 thru earlier of July 31 or coho quota (D.2). Closed August 1 thru August 9. Closure may be rescinded based on STT evaluation on or about July 24. All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days.		August 10 thru earlier of September 15 or coho quota (D.2). All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days.	
Humbug Mountain					**Humbug Mountain**

Feb-Apr	May	June	July	August	Sep/Oct/Nov
Humbug Mountain					**Humbug Mountain**
	May 25 thru September 30. All salmon. 2 fish per day, but only one may be a chinook; no more than 6 fish in 7 consecutive days. Closed Tuesdays and Wednesdays of each week. Additional days of the week may be closed inseason if the expected catch through the scheduled season closure exceeds 20,000 chinook based on STT evaluation on or about July 10 (C.6). Conservation Zone 2, Klamath River mouth, is closed August 1 thru August 31 (C.3).				**Trinidad Head** October 1 thru October 31. All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days. Open only 0 to 6 nautical miles of shore. **Punta Gorda**
Horse Mountain					**Horse Mountain**
Nearest Saturday to February 15 thru nearest Sunday to November 15. All salmon. 2 fish per day.					
Point Arena					**Point Arena**
	Nearest Saturday to March 1 thru nearest Sunday to November 1. All salmon. 2 fish per day. Conservation Zone 3, mouth of San Francisco Bay, is closed March 2 thru March 31, 1991 (C.4). Beginning in 1992, Conservation Zone 3 is closed the nearest Saturday to March 1 thru the nearest Friday to March 31.				
U.S.-Mexico Border					**U.S.-Mexico Border**

B. MINIMUM SIZE LIMITS (total length in inches)

	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None
Cape Falcon to Humbug Mountain	20.0	16.0	None
South of Humbug Mountain	20.0	20.0	None, except 20.0 off California

C. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

1. Hooks - Single point, single shank barbless hooks are required north of Point Conception, California.

2. Conservation Zone 1 - The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18′00″ N. latitude to 124°13′18″ W. longitude, then southerly along a line of 167° True to 46°11′06″ N. latitude and 124°11′00″ W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty is closed, except as follows: An opening of Conservation Zone 1 will be considered based on a projection of the STT, on or about August 1, showing sufficient chinook are available to allow completion of the coho allocation in the Columbia River subarea.

3. Conservation Zone 2 - The ocean area surrounding the Klamath River mouth bounded on the north by 41°38′48″ N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23′00″ W. longitude (approximately 12 nautical miles of shore), and on the south by 41°26′48″ N. latitude (approximately 6 nautical miles south of the Klamath River mouth), is closed August 1 through August 31.

4. Conservation Zone 3 (Sacramento River Winter-Run Chinook Conservation Closure) - The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54′17″ N. latitude, 122°43′35″ W. longitude) southerly to Duxbury Buoy to Channel Buoy 1 to Channel Buoy 2 to Point San Pedro (San Mateo County, 37°35′40″ N. latitude, 122°31′10″ W. longitude) is closed March 2 through March 31, 1991 (beginning in 1992, the nearest Saturday to March 1 through the nearest Friday to March 31).

5. Area Within the 27 Fathom Curve - The ocean area that is bounded by a line from Cape Falcon to 45°46'00" N., 124°01'20" W. (approximately 1.6 nautical miles west of Cape Falcon) to 45°04'15" N., 124°04'00" W. (approximately 2.2 nautical miles northwest of Cascade Head) to 44°40'40" N., 124°09'15" W. (approximately 3 nautical miles west of Yaquina Head) to 44°08'30" N., 124°12'00" W. (approximately 3 nautical miles west of Heceta Head) to 43°40'15" N., 124°14'30" W. (approximately 0.5 nautical mile west of the Umpqua Whistle Buoy) to 43°31'30" N., 124°17'00" W. (approximately 1.7 nautical miles west of the beach) to 43°15'15" N., 124°28'00" W. (approximately 3 nautical miles west of the beach) to 43°01'30" N., 124°29'05" W. (approximately 2 nautical miles west of Four Mile Creek) to 42°56'00" N., 124°33'10" W. (approximately 2.4 nautical miles west of the mouth of Floras Creek) to 42°50'20" N., 124°38'30" W. (approximately 3.4 nautical miles west of Cape Blanco) to 42°40'30" N., 124°28'45" W. (approximately 1.1 nautical mile west of Humbug Mountain) to Humbug Mountain.

6. Inseason Management - To meet preseason management objectives, certain inseason regulatory modifications may be necessary, such as action to extend the duration of fisheries to the end of scheduled seasons or to keep within chinook harvest guidelines for management subareas.

   North of Cape Falcon - Such actions might include but are not limited to: closure from 0 to 3, or 0 to 6, or 3 to 200, or 5 to 200 nautical miles of shore; closure from a point extending due west from Tatoosh Island for 5 nautical miles, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from the North Head at the Columbia River mouth north to Leadbetter Point; and change of species which may be landed.

   Additionally, the procedure for any inseason transfer of coho among the recreational subareas will be as follows: After conferring with representatives of the affected ports and the SAS recreational representatives north of Cape Falcon, National Marine Fisheries Service may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

   Humbug Mountain to Horse Mountain - On or about July 10, the STT will evaluate recreational chinook landings and project the expected landings through the scheduled season closure. If the projected harvest exceeds 20,000 chinook, additional days per week may be closed.

7. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-salmon-except-coho fisheries in state waters.

D. QUOTAS

1. Chinook and Coho Quotas North of Cape Falcon - All non-treaty troll and recreational ocean fisheries will be limited by either: (a) an overall 80,000 chinook quota or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 320,000. The recreational fishery will be limited by overall catch quotas of 40,000 chinook and 233,000 coho.

   For the recreational subarea between Leadbetter Point and Cape Falcon, 7,000 coho will be reserved from within the overall 116,500 subarea quota to assure a fishery beginning September 16. In August, the STT will determine how many chinook to reserve from within the subarea chinook guideline of 16,600 to allow attainment of the 7,000 coho reserve.

2. Coho Quotas South of Cape Falcon - Overall recreational catch is limited to 259,000 coho salmon from Cape Falcon to the U.S.-Mexico border. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery no later than August 15. The fishery south of Humbug Mountain does not close if the recreational coho quota is reached.

Table 3. Treaty Indian management measures for 1991 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, and C which must be followed for lawful participation in the fishery.)

A. SEASONS, SPECIES, MINIMUM SIZE LIMITS, AND GEAR RESTRICTIONS

Tribe and Area Boundaries	Open Seasons	Salmon Species	Minimum Size Limit (inches) Chinook	Coho	Special Restrictions by Area
Makah - That portion of the Fishery Management Area (FMA) north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat, or no more than 4 hand-held lines per person.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Quileute - That portion of the FMA between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Hoh - That portion of the FMA between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Quinault - That portion of the FMA between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	

B. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

1. All boundaries may be changed to include such other areas as may hereafter be authorized for that tribe's treaty fishery by a federal court.

2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 inches for chinook and 12 inches for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:
Makah Tribe - None.
Quileute, Hoh, and Quinault tribes - Not more than 2 chinook longer than 24 inches in total length may be retained per day. Chinook less than 24 inches total length may be retained.

3 The areas within a 6-mile radius of the mouths of the Queets River (47°31'42" N. latitude) and the Hoh River (47°45'12" N. latitude) will be closed to commercial fishing. A closure within 2 miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. QUOTAS

1. The overall ocean quotas for the Washington coastal tribes are: 33,000 chinook and 80,000 coho salmon. These quotas include troll catches by the Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 30.

BILLING CODE 3510-22-C

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will be in effect.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA)—the Exclusive Economic Zone off the Coasts of Washington, Oregon, and California—is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds. There is no limit to the number of lines that a person may use while recreationally fishing for salmon off California.

Geographical Landmarks

Wherever the words "nautical miles of shore" are used in this rule, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this notice are at the following locations:

Umatilla-Tatoosh Line.	A straight line drawn southerly from the Cape Flattery light (48°23'50" N. latitude) to Umatilla Buoy (48°11'20" N. latitude).
Cape Alava	48°10'00" N. lat.
Carroll Island	48°00'18" N. lat.
Queets River	47°31'42" N. lat.
Copalis Head	47°09'50" N. lat.
Leadbetter Point.	46°38'10" N. lat.
North Head	46°18'00" N. lat.
Red Buoy Line	Seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Columbia River Buoy, then due west along 46°11'06" N. latitude.
Cape Falcon	45°46'00" N. lat.
Cascade Head	45°03'50" N. lat.
Florence South Jetty.	44°01'00" N. lat.
Cape Arago	43°18'20" N. lat.
Humbug Mountain.	42°40'30" N. lat.
Sisters Rocks	42°35'45" N. lat.
Mack Arch	42°13'40" N. lat.
Trinidad Head	41°03'30" N. lat.
Punta Gorda	40°15'30" N. lat.
Horse Mountain	40°05'00" N. lat.
Point Arena	38°57'30" N. lat.
Point San Pedro	37°35'40" N. lat.
Point Conception.	34°27'00" N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen must monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing (50 CFR 661, appendix II.B.11.).

Classification

The 1991 and specified 1992 management measures described above are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the offices of the Regional Directors (see **ADDRESSES**) during business hours until the end of the comment period.

1992 Seasons

Seasons that begin prior to May 1 are set under the authority of 50 CFR Part 661, and not under the Secretary's emergency authority and, thus, are effective until modified, superseded, or rescinded.

Preseason Notice of 1991 Management Measures

Most of the actions in this notice are taken under 50 CFR part 661. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that they are consistent with the Magnuson Act and other applicable law, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis (RFA) and Final Supplemental Environmental Impact Statement (SEIS) prepared for the framework amendment to the FMP. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.23 of the ocean salmon regulations states that the Secretary will publish a notice establishing management measures each year and will invite public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of at least 15 days after the filing of the notice with the **Federal Register**.

Because of the depressed status of some salmon stocks, and the need to reduce harvest in some areas to prevent overfishing and achieve the FMP's spawning escapement goals, the Secretary has determined that time does not permit a comment period prior to the date the management measures must be in effect. Comments will be accepted for 15 days after the effective date of this notice.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, STT, and Salmon Advisory Subpanel meetings, and in public hearings held in Washington, Oregon, and California in late March and early April, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meetings.

Emergency Actions

The Assistant Administrator also has determined that the measures described in the preamble that deviate from the framework FMP and its implementing regulations are necessary to respond to emergency situations and are consistent with the Magnuson Act and other applicable law. The measures falling under emergency authority of section

305(c) of the Magnuson Act (emergency rule) involve the following as listed in the preamble: (1) reduction of the OCN coho ocean harvest rate from 53 to 46 percent; and, (2) provision for an ocean coho salmon TAC north of Cape Falcon, Oregon that will fall short of the 19,100 fish Hood Canal spawning escapement goal for natural spawners. He has determined that continuation of the regulations that the emergency measures are intended to replace would not prevent overfishing. In addition, implementing regulations in conformance with the existing plan and without using emergency authority would not adequately protect the OCN coho, would not achieve the optimum yield from the resource, and would not apportion the ocean and inside harvests equitably among fisheries, and that it is necessary to amend those portions of the framework FMP and its implementing regulations by emergency action pursuant to 16 U.S.C. 1855(c).

The Assistant Administrator finds that the reasons justifying promulgation of this emergency rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days the effective date of these emergency regulations, as required by section 553 (b) and (d) of the Administrative Procedure Act. The public had opportunities to comment on the substance of this emergency rule during meetings of the Council and its advisory committees in March and April, 1991. The public will also have an opportunity to comment on the emergency measures during the comment period provided by this emergency rule.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, California, and the San Francisco Bay Conservation and Development Commission. This determination has been submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Council prepared an environmental assessment (EA) for this action and the Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Directors (see **ADDRESSES**).

This emergency rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. Washington, Oregon, and California are expected to implement State regulations compatible with the Federal rule.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 1, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, the appendix to 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Appendix [Amended]

2. In the appendix, section IV.A., the following sentences are added temporarily at the end of the first paragraph, effective May 2, 1991 to August 6, 1991, to read as follows:

In 1991 the Hood Canal natural coho will not be managed to meet the goals set through the District Court procedures. The coho will be managed to protect its long-term productivity.

3. In the appendix, section IV.A., in the table Summary of Specific Management Goals for Stocks in the Salmon Management Unit, footnote 4, which pertains to Oregon coastal natural (OCN) coho, is suspended and a new footnote 4a is added immediately following footnote 4 in the table. The footnote text is added as set forth below. This amendment is effective May 2, 1991, to August 6, 1991.

4a. In 1991 the OCN coho spawning escapement goal is based on an ocean harvest rate on OCN coho of 46 percent.

[FR Doc. 91-10832 Filed 5-2-91; 4:26 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director) is prohibiting further retention of Pacific ocean perch (POP) by vessels fishing in the Bering Sea subarea and is requiring that POP be treated in the same manner as prohibited species. This action is necessary to prevent the total allowable catch (TAC) for POP in the Bering Sea subarea from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving POP stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 2, 1991, through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) governs the groundfish fishery in the Exclusive Economic Zone within the Bearing Sea and Aleutian Islands (BSAI) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR 611.93 and 50 CFR part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. The TAC amounts for target species and the "other species" category are specified annually within the OY range and are apportioned by subarea under § 675.20(a)(2)(i).

The initial 1991 TAC specified for POP in the Bering Sea subarea was 3,885 mt, all of which was apportioned to domestic annual processing (DAP) (56 FR 6290; February 15, 1991). Under § 675.20(a)(9), when the Regional Director determines that the TAC of any target species of the "other species" category has been achieved prior to the end of a fishing year, the Secretary of Commerce will publish a notice in the **Federal Register** requiring that species or the "other species" be treated in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the year.

The Regional Director has determined that the TAC for POP in the Bering Sea subarea will be reached on May 2, 1991. Therefore, he is issuing this notice under authority of § 675.20(a)(9) and is prohibiting retention of POP by vessels in the Bering Sea subarea and is requiring that POP be treated in the same manner as prohibited species under § 675.20(c) from noon, A.l.t., May 2, 1991, through midnight, A.l.t., December 31, 1991.

Classification

This action is taken under § 675.20(a)(9) and § 675.20(c) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 1991.

Richard H. Schaefer,

Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10831 Filed 5-2-91; 4:17 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 89
Wednesday, May 8, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230 and 250

RIN 3206-AA66

Organization of the Government for Personnel Management; Personnel Management in Agencies

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is proposing to reorganize and consolidate regulations contained in parts 230 and 250 regarding agency authorities for taking personnel actions and OPM oversight of agency actions. Specifically, this proposal is to consolidate these materials into part 250 and abolish part 230. A consolidation of the regulations contained in parts 230 and 250 was proposed in the **Federal Register** of May 20, 1983 (48 FR 22728), but was not finalized. The changes now proposed are part of OPM's effort to streamline its regulations and to maintain structural consistency between them and title 5 of the United States Code.

DATES: Comments must be submitted on or before July 8, 1991.

ADDRESS: Send or deliver written comments to Michael D. Clogston, Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, Room 7695, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Bruce Oland, (202) 606-2458.

SUPPLEMENTARY INFORMATION: This proposed rule is designed to improve the technical integrity of 5 CFR by (1) removing part 230—Organization of the Government for Personnel Management; (2) transferring regulations from part 230 to part 250—Personnel Management in Agencies; and (3) reorganizing part 250 to combine related regulations and to accommodate the added material.

The proposed changes are necessary to bring the organization of 5 CFR into parallel with the subject matter of title 5, United States Code. The Civil Service Reform Act of 1978 added a new 5 U.S.C. chapter 23. The subject matter in 5 CFR part 230 does not parallel that material.

These revisions add to, and refine the substance of, the regulations moved from part 230. Because the affected regulations cover closely related topics, i.e., the general personnel management authorities exercised by agencies (part 230) and the authorities agencies receive through delegation agreements with OPM (part 250), existing regulations in parts 230 and 250 overlap to some extent. The amended regulations combine these two parts, eliminating these redundancies and streamlining OPM's regulations.

Accordingly, this revision would remove 5 CFR part 230, subparts A and C, which currently are reserved. The regulations in subpart B of part 230 relating to the exercise of agency authority to take personnel actions would be transferred to 5 CFR part 250, subpart A, and would be retitled "Authority for Personnel Actions in Agencies." Section 230.201, which lays out the standards and requirements for agency personnel actions in general, would be redesignated as § 250.101. The former § 250.101 covering delegation agreements would be redesignated as § 250.102 since this section covers specific circumstances under which agencies may take personnel actions and logically follows the material inserted at § 250.101. Sections 230.202 and 250.102 would be combined into § 250.103 which would cover OPM's authority to take corrective action or suspend or withdraw agency authority, including withdrawals effected by revoking a delegation agreement. The text would include editorial changes to combine material from the two source sections.

Subpart D of part 230, entitled "Agency Authority to Take Personnel Actions in a National Emergency," would be redesignated part 250, subpart B. Section 250.201 refines material currently contained in Federal Personnel Manual chapter 230, section 4-3 on the nature of a national emergency. Section 250.202 is material from section 4-3 on termination of a national emergency. Sections 250.203 through 250.206 provide for appropriate agency flexibilities to address the unusual but very real personnel demands that may arise during national emergencies of varying degrees of severity. Section 250.207 is new material or record-keeping requirements. Cross-references to other regulations in 5 CFR would be updated.

Agencies and other interested parties are requested to submit comments regarding any substantive effect of these revisions on agencies' exercise of personnel authorities.

Related guidance in chapters 230 and 250 of the Federal Personnel Manual also will be revised and updated as part of this effort. Comments and suggestions for improving this FPM guidance are also welcome.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to the internal management of Federal agencies and does not substantively change existing regulations.

List of Subjects in 5 CFR Part 250

Authority delegations (Government agencies); Civil Defense; Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR parts 230 and 250 as follows:

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT—[REMOVED]

1. In 5 CFR chapter 1, part 230 is removed.

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

2. Part 250 is amended by revising subpart A and by adding subpart B to read as follows:

Subpart A—Authority for Personnel Actions in Agencies

Sec.

250.101 Standards and requirements for agency personnel actions.

Sec.

Authority: 5 U.S.C. 1104, 1302, 3301, 3302; Pub. L. 95-454, sec. 3(5); E.O. 10577, 12 FR 1259, 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—Authority for Personnel Actions in Agencies

§ 250.101 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards and regulations issued by the Office of Personnel Management, the instructions published by OPM in the Federal Personnel Manual, and the provisions of any agreement developed between OPM and the agency in connection with delegation of a specific authority. When a personnel action is being taken as a result of (a) an order of a Court or a settlement agreement, or (b) a decision or order of or a settlement agreement or an arbitral award reached under the labor arbitration process or the rules and regulations of the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or OPM, the agency shall follow the instructions in Federal Personnel Manual Chapter 296, and must comply with all other relevant substantive and documentary requirements, including those applicable to retirement, life insurance, and health benefits.

§ 250.102 Delegation agreements.

In certain circumstances, an agency will receive authorities through a delegation agreement developed between the agency and OPM. The agreement will set forth the conditions for application of the delegated authorities. The agreement will include a description of minimum standards of performance and the system of oversight to be used by the agency and by OPM in monitoring the use of each delegated authority.

§ 250.103 Taking corrective action or suspending or withdrawing agency authority.

If OPM finds that an agency has taken an action contrary to a law, rule, regulation, or standard which OPM administers, it may require the agency to take corrective action. OPM may suspend or withdraw any authority granted under this chapter to an agency, including any authority granted by delegation agreement, when it finds that the agency has not complied with qualification standards issued by OPM, the instructions published by OPM in the Federal Personnel Manual, or the regulations in this chapter; or that the suspension or withdrawal is in the interest of the service for any other reason. OPM may suspend or revoke a delegation agreement established under § 250.102 at any time, if it judges that the agency is not adhering to the provisions of the agreement.

Subpart B—Agency Authority to Take Personnel Actions in a National Emergency

§ 250.201 Definition of National Emergency.

(a) A national emergency meets all of the following conditions:

(1) It was declared by the President or Congress;

(2) It involves a danger to the United States' safety, security or stability which results from specified circumstances or conditions and which is national in scope; and

(3) It requires a national program specifically intended to combat the threat to national safety, security or stability.

(b) A national emergency is not initiated by a general Presidential or congressional statement that broad problems, such as unemployment, health care costs or rural poverty, constitutes a crisis or emergency, unless particular conditions are specifically cited as threatening the nation's safety, security or stability and a program is set up to meet the threat.

§ 250.202 Termination of National Emergency.

(a) A national emergency no longer exists if:

(1) It is officially terminated by the President or Congress; or

(2) The conditions which created the emergency are terminated or corrected.

(b) A national emergency is terminated whenever the specific circumstance or event which triggered the emergency is ended, even though broader related problems may not be resolved.

§ 250.203 When OPM approval is required.

(a) Agencies may take two types of actions covered by this part without OPM approval:

(1) Personnel actions necessary for effective functioning following an attack on the United States or other emergency posing an immediate threat of loss of life or destruction of property, as provided in § 250.204.

(2) Emergency-indefinite appointments made during a national emergency that meets the definition in § 250.201 and in accordance with the provisions of § 250.206.

(b) Use of emergency personnel authorities in any other situations requires prior OPM approval.

§ 250.204 Agency authority to take personnel actions in a National Emergency posing immediate threat to life or property.

(a) In a national emergency resulting from an attack on the United States or from another event that poses an immediate threat of loss of life or destruction of property, agencies are authorized to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of emergency without regard to any regulation or instruction of OPM, except those which become effective upon or following an attack on the United States. This authority applies only to actions under OPM jurisdiction.

(b) Actions taken under this section shall be as consistent as possible, under the circumstances, with qualification standards, regulations, and instructions which would pertain but for the national emergency.

(c) An employee may not acquire competitive civil service status by virtue of any action taken under this section.

(d) Use of the authority granted in paragraph (a) of this section shall be discontinued as soon as conditions permit the reapplication of the pertinent qualification standards, regulations and instructions. Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by OPM.

§ 250.205 Use of authority by agencies with a defense-related mission.

Agencies with a defense-related mission may request OPM's approval to use the authority even without the existence of a declared national emergency when:

(a) The President has authorized the call-up of some portion of the military reserves for some military purpose;

(b) The agency or department head certifies that this hiring authority is necessary;

(c) The Director of OPM confirms that normal procedures cannot meet surge employment requirements; and

(d) The interests of economy and efficiency of defense-related agencies require such appointments.

§ 250.206 Agency authority to make emergency appointments on an indefinite basis in a National Emergency.

(a) *Basic authority.* In a national emergency, an agency may make emergency appointments on an indefinite basis to continuing positions (normally those expected to last longer than a year) when it is not in the public interest to make career or career conditional appointments.

(b) *Appointment from registers.* Except as provided by paragraphs (c) and (d) of this section, an agency shall make appointments under this authority from appropriate registers of eligibles as long as there are available eligibles.

(c) *Appointment outside the register.* An agency may make emergency appointments under this authority outside registers of eligibles when all the following conditions are met:

(1) A number of vacancies must be filled immediately as a result of conditions created by the national emergency;

(2) Either the number of vacancies to be filled exceeds the number of immediately available eligibles or emergency conditions do not allow sufficient time to make this determination; and

(3) Available eligibles on registers are given prior or concurrent consideration for appointment to the extent possible within emergency time considerations.

(d) *Appointment noncompetitively.* An agency may give emergency appointments under this authority to the following classes of persons without regard to registers of eligibles and the provisions in § 333.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency in accordance with applicable requirements published in the Federal Personnel Manual;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and instructions issued by the agency authorized to implement the law and Executive order; and

(3) Former Federal employees eligible for reinstatement.

(e) *Tenure of emergency employees.*

(1) Emergency employees do not acquire a competitive status on the basis of their emergency appointments.

(2) An emergency appointment may be continued for the duration of the emergency for which it is made.

(f) *Trial period.*

(1) An employee's 1st year of service under emergency appointment is a trial period. Section 315.802(b) of this chapter provides for conditions under which prior service is counted toward completion of a trial period.

(2) An agency may terminate the appointment of an emergency employee at any time during the trial period, adhering to the procedures set forth in § 315.804 or § 315.805 of this chapter, as appropriate.

(g) *Eligibility for within-grade and merit increases.* An emergency employee serving in a position subject to the General Schedule or the Performance Management and Recognition System is eligible for within-grade or merit increases in accordance with parts 531 and 540, respectively, of this chapter.

(h) *Application of other regulations.*

(1) The term "indefinite employee" as used in the following includes an emergency employee: Part 351, subpart G of part 550, and part 752 of this chapter.

(2) The selection procedures of § 333.101 of this chapter apply to emergency employees appointed outside the register under paragraph (c) of this section.

(3) As provided in § 831.201 of this chapter, an employee serving under an emergency appointment under authority of this section generally is excluded from coverage under the Civil Service Retirement System.

(i) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency employee to any position for which it is making emergency appointments.

§ 250.207 Record-keeping requirements.

(a) Agencies shall document actions taken under this subpart in accordance with instructions in FPM Supplement 296–33.

(b) Agencies shall maintain records of these actions in accordance with instructions in FPM Supplement 293–31.

[FR Doc. 91–10904 Filed 5–7–91; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 351

Reduction in Force Ratings for Retention-Longer Period to Credit Ratings; Clarification of Assignment Rights

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations that will allow employees to receive retention service credit for performance ratings received during the 4-year period prior to the date the agency issues specific reduction in force notices. At present, employees receive additional service credit for reduction in force purposes based on ratings received during the 3-year period prior to the date the agency issues specific notices. The new regulations better ensure that employees competing for positions under OPM's reduction in force regulations receive credit for three actual annual performance ratings. The proposed regulations also make technical changes in how agencies (1) document the performance ratings that are used for retention purposes, (2) establish competitive areas that cover an Inspector General activity, and (3) offer temporary positions under OPM's reduction in force regulations.

DATES: Written comments will be considered if received no later than July 8, 1991.

ADDRESSES: Send or deliver written comments to: Associate Director, Career Entry Group, room 6F08, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Edward P. McHugh or Thomas A. Glennon, (202) 606–0960.

SUPPLEMENTARY INFORMATION: Section 5 CFR 351.504(b) presently provides that an employee's entitlement to additional service credit for performance for retention purposes is based on the three most recent annual performance ratings of record received by the employee during the 3-year period prior to the date the employee receives a specific reduction in force notice. Currently, employees who lack three actual ratings receive retention credit for performance on the basis of one rating of "Fully Successful" for each missing rating. In reviewing the experiences of agencies that were planning for possible reduction in force actions, we found that the use of a 3-year period occasionally resulted in employees receiving credit for fewer than three actual performance ratings for retention purposes,

particularly in situations where the agency used different performance rating cycles at an installation.

OPM now proposes to revise the retention regulations so that an employee's entitlement to additional service credit for reduction in force purposes will be based on the employee's three most recent annual performance ratings of record received during the 4-year period prior to the date the agency issues specific reduction in force notices.

In some cases agencies establish a cutoff date—a specified number of days prior to the date it issues reduction in force notices to employees—after which no new annual performance ratings are put on record and used for retention purposes. This procedure is implemented through an agency's performance management system or other appropriate issuance. The cutoff date option provides the agency with additional time to properly determine its employees' retention standing. These proposed regulations provide that, when a cutoff date is used, employees will receive performance credit for retention purposes based on the three most recent annual ratings received during the 4-year period prior to the cutoff date. The regulations also require that the awarding of additional service credit for reduction in force purposes must be uniformly and consistently applied by an agency, must be consistent with the agency's performance management system, and must be documented in the agency's performance appraisal system.

This new procedure for crediting performance ratings will be mandatory only after a transition period of 6 months from the date final regulations are published. During the 6-month transition period, agencies with ongoing reduction in force actions may, at their option, continue using the 3-year period for crediting ratings under the retention regulations, or change to the new 4-year period for crediting the ratings.

In another change, consistent with the Inspector General Act of 1978, Public Law 95–452, OPM proposes to add a new paragraph 5 CFR 351.402(d) recognizing that each Inspector General office must be in a separate reduction in force competitive area that is established only for that office.

Also, OPM proposes to add a new paragraph 5 CFR 351.704(d) which prohibits an agency from offering a competing employee assignment to a temporary position except in lieu of separation by reduction in force. This change is consistent with the final decision of the Merit Systems Protection Board in *Jones* v. *Department of the Army*. 42 M.S.P.R. 680 (1990). (A summary of the *Jones* decision may be found in Federal Personnel Manual Letter 351–24.) This revision ensures that an agency may satisfy a nontemporary employee's right of assignment under the reduction in force regulations only by offering the employee a nontemporary position. On other assignment right topics, OPM proposes to revise paragraph 5 CFR 351.701(a) to clarify longstanding policy that (1) promotion potential is not a consideration in determining whether an employee is offered assignment to another position, and (2) an employee who accepts assignment retains the same status and tenure in the new position. Finally, OPM proposes to revise 5 CFR 351.703 to provide that an agency may waive qualification in offering an employee assignment only to a vacant, rather than occupied, position. This change ensures that the retention provisions are uniformly and consistently applied in a reduction in force, as required by 5 CFR 351.201(c).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Part 351

Government employees, U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend Part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. In § 351.402, paragraphs (a), (b), and (c) are republished for the convenience of the reader and paragraph (d) is added. As revised, the section reads as follows:

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

(d) Each agency shall establish a separate competitive area for each Inspector General office in which only employees of that office shall compete for retention under this part.

3. Section 351.504 is amended by revising paragraph (b), the introductory text to paragraph (c), the introductory text to paragraph (d) and paragraph (c)(2) as set out below. The remainder of the section is republished for the convenience of the reader. As revised, the section reads as follows:

§ 351.504 Credit for performance.

(a) Annual performance ratings of record of outstanding (Level 5), exceeds fully successful (Level 4), fully successful (Level 3), minimally successful (Level 2), and unacceptable (Level 1), or equivalent, are those ratings established under Part 430 of this chapter.

(b)(1) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's three most recent annual performance ratings of record received during the 4-year period prior to the date of issuance of specific reduction in force notices, except as provided in paragraph (b)(2) of this section.

(2) To provide adequate time to determine employee retention standing, an agency may provide for a cutoff date—a specified number of days prior to the issuance of specific reduction in force notices—after which no new annual ratings will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee will receive performance credit for the three most recent annual ratings received during the 4-year period prior to the cutoff date.

(3) To be creditable for purposes of this subpart, a rating must have been issued to the employee, with all

appropriate reviews and signatures, and must also be on record (e.g., the rating is available for use by the office responsible for establishing retention registers).

(4) The awarding of additional service credit based on performance for purposes of this subpart must be uniformly and consistently applied, and must be consistent with the agency's performance appraisal system, and other appropriate issuances that implement these policies. Each agency must specify in its performance appraisal system or other appropriate issuance:

(i) The types of annual performance ratings of record that are used for purposes of this subpart;

(ii) The conditions under which a rating is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the agency issues specific reduction in force notices or the agency-established cutoff date for ratings, as appropriate; and

(iii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices (i.e., general or specific) after which no new annual ratings will be put on record and used for purposes of this subpart.

(c) Service credit for employees who do not have three actual annual performance ratings of record received during the 4-year period prior to the date of issuance of specific reduction in force notices, or the 4-year period prior to the agency-established cutoff date for ratings permitted in paragraph (b)(2) of this section, shall be determined as follows:

(1) An employee who has not received an annual performance rating of record shall receive credit for performance on the basis of three assumed ratings of fully successful (Level 3) or equivalent.

(2) An employee who has received at least one but fewer than three previous annual performance ratings of record shall receive credit for performance on the basis of the actual rating(s) received and of one or two, assumed rating(s) of fully successful (Level 3) or equivalent, whichever is needed to credit the employee with three ratings.

(d) The additional service credit an employee receives for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding (Level 5) or equivalent;

(2) Sixteen additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; or

(3) Twelve additional years of service for each performance rating of fully successful (Level 3) or equivalent.

(e) The current annual performance rating of record shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual performance rating of record; and

(2) An employee's current annual performance rating of record shall be presumed to be fully successful when the employee had been demoted or reassigned under part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction in force notices has not received a rating for performance in the position to which demoted or reassigned.

4. Section 351.701 is amended by revising paragraph (a) to read as follows:

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area and last at least 3 months. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

* * * * *

5. Section 351.703 is revised to read as follows:

§ 351.703 Exception to qualifications.

An agency may assign an employee to a vacant position under sections 351.201(b) or 351.701 of this part without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

6. Section 351.704 is amended by adding a new paragraph (b)(4) as set out below. The remainder of the section is republished for the convenience of the reader. As revised, the section reads as follows:

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under section 351.701 by assignment under section 351.201(b) or section 351.705 to a position having a representative rate equal to that to which he or she would be entitled under section 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

(4) Authorize or permit an agency to assign a competing employee to a temporary position (i.e., a position under an appointment not to exceed one year), except as an offer of assignment in lieu of separation by reduction in force under this part when the employee has no right to a position under section 351.701 or section 351.704(a)(1) of this part. This option does not preclude an agency from, as an alternative, also using a temporary position to reemploy a competing employee following separation by reduction in force under this part.

[FR Doc. 91-10905 Filed 5-7-91; 8:45]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 319

[Docket No. 88-019-E]

RIN 0583-AA92

Labeling of Frankfurters and Similar Products Containing Binders and Extenders

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On March 22, 1991, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat inspection regulations by deleting specific labeling requirements for prominent disclosure of the use of certain binders and extenders in frankfurters and similar products. Prior to the close of the comment period of April 22, 1991, FSIS had received requests to extend the comment period so that additional data and information can be provided. FSIS has determined that the requests should be granted and, therefore, is reopening the comment period for 15 days.

DATES: Comments must be received on or before May 23, 1991.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: On May 17, 1988, FSIS received a petition from Protein Technologies International (PTI) to amend the standards of identity for frankfurters and similar cooked sausage and cheesefurters and similar meat food products to eliminate use limitations and prominent labeling requirements for certain binders as prescribed in part 319 of the Federal meat inspection regulations (9 CFR 319). The petitioner also requested deletion of § 317.8(b)(16) of the Federal meat inspection regulations (9 CFR 317.8(b)(16)) which requires prominent labeling of binders used in standardized sausages.

The petitioner contended that the use limitation on binders was imposed when standards were severely restrictive, and that removal of the use limitation would allow food processors to produce nutritional products economically. The petitioner further contended that prominent labeling of binders is duplicative because the binder must also be listed in the product label's ingredients statement which provides complete information about the contents of all meat and poultry products, and that such prominent labeling is not required for products that contain ingredients such as poultry products or mechanically separated (species) and flavoring materials.

In response to the PTI petition, FSIS published an advance notice of proposed rulemaking on August 24, 1988 (53 FR 32247) requesting comments and information concerning the PTI petition. FSIS received five comments; two opposed and two supported the petition, while one comment supported only portions of the petition.

On November 9, 1988, PTI submitted an amended petition which requested that FSIS initiate rulemaking only to remove the prominent labeling requirements for binders. The petitioner stated their desire to avoid delays that could result in resolving the more complex issues that may surface with proposing removal of the use limitations on binders.

On March 22, 1991, FSIS published a proposed rule to eliminate the requirement that the use of binders and extenders be prominently displayed on the product label when used in specific meat food products (56 FR 12126). Interested persons were given until April 22, 1991, in which to comment on the proposed rule. Prior to closure of the comment period, FSIS received requests to extend the comment period to allow additional time for information to be gathered and submitted. FSIS is interested in receiving this information and is, therefore, reopening the comment period for 15 days.

Done at Washington, DC on: May 2, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-10887 Filed 5-7-91; 8:45 am]

BILLING CODE 3401-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

RIN AA81

Fair Housing

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to amend its regulations governing fair housing in order to bring certain requirements therein into conformity with the Home Mortgage Disclosure Act ("HMDA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), and implemented by revisions to Regulation C ("Regulation C") adopted by the Board of Governors of the Federal Reserve System ("FRB") on December 11, 1989 (54 FR 51356 (Dec. 15, 1989)). More specifically, the FDIC proposes to revise the home loan application log-sheet ("FDIC log-sheet") currently prescribed by its fair housing regulations in order to conform it to the loan/application register prescribed by Regulation C ("HMDA register" or "HMDA LAR"). Regulation C requires certain insured State nonmember banks (among others) to maintain information regarding home loan applications in a register format. FDIC's fair housing regulations require certain insured State nonmember banks to maintain information regarding home loan applications in a similar format. As a result, certain insured State nonmember banks are presently required to keep two largely repetitive registers. This duplication in forms will no longer be required if the proposed rule is adopted. Instead, banks subject to the FDIC's long-sheet requirements will be able to satisfy those requirements by maintaining a HMDA register, provided that (i) data as to race or national origin, sex, and income are recorded for all applicants, and (ii) all the information required is entered on the HMDA register within 30 calendar days after final disposition of the loan application. The FDIC's ongoing commitment to enforce the civil rights and consumer protection laws will be furthered in that the HMDA register, in some respects, provides more detailed data, much of which is available to the public.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F-400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m., and may be inspected in Room F-457 between 8:30 a.m. and 5 p.m., on business days. FAX number: (202) 898-3838.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending

Analyst, Office of Consumer Affairs, (202) 898–3538 or call toll-free at 1–800–424–5488, or Valeria J. Best, Counsel, (202) 898–3812, or Adrienne George, Attorney, (202) 898–3743, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background Information

Part 338 of the FDIC's Rules and Regulations is the FDIC's fair housing lending regulation. Part 338 has two main purposes. First, it implements section 805 of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19), as amended by the Fair Housing Amendments Act of 1988. Second, it implements a substitute monitoring program as permitted by Regulation B, 12 CFR part 202, which itself implements the Equal Credit Opportunity Act of 1974 ("ECOA") (15 U.S.C. 1691–91f).

The ECOA forbids banks (and all other creditors) from discriminating against any applicant on a "prohibited basis" regarding any aspect of a credit transaction. The term "prohibited basis" includes race, color, religion, national origin, sex, marital status, and age. In order to monitor compliance with the ECOA, the FRB's Regulation B specifies data-gathering rules for most consumer loans. In the case of loans related to the purchase or refinancing of the borrower's dwelling, however, a monitoring program required by a sister federal financial regulatory agency may be substituted for the data-gathering program required by the FRB. 12 CFR 202.13(d). The FDIC adopted part 338, in part, to implement a substitute monitoring program as permitted by the FRB. The data-gathering requirements imposed by the FDIC are set forth in § 338.4 of the FDIC's rules and regulations.

Section 338.4 requires all insured State nonmember banks to collect information as to a home loan applicant's race or national origin, sex, marital status, and age. All insured State nonmember banks are required to retain identifying information such as the date of the home loan application, the name and address of the applicant, and the location of the property to which the application pertains. Additional requirements are imposed on any insured State nonmember bank which has an office in a primary metropolitan statistical area ("PMSA"), a metropolitan statistical area ("MSA"), or a consolidated metropolitan statistical area ("CMSA") that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year. Such institutions must retain more extensive data on the applicant (such as employment, income, number of dependents, assets and liabilities), the subject property (such as the year built, market value, census tract), and the loan request (such as purpose, amount interest rate, closing costs, taxes and insurance, type of mortgage). 12 CFR 338.4(a)(2). The information may be requested on the loan application form or on a separate sheet of paper that refers to the loan application. The proposed rule will not affect the recordkeeping requirements described above. The proposed rule will, however, affect the additional recordkeeping requirements imposed by § 338.4(a)(2)(iv) concerning the maintenance of a log-sheet.

Compilation of Data Through a Log-sheet Format

The fair housing lending statutes described above do not specifically require the compilation of data in a log-sheet format. Nonetheless, the FDIC views the collection of certain information in a log-sheet format as necessary to assist FDIC examiners in conducting the fair housing portion of the examination more effectively. Log-sheets give examiners an overall perspective of a bank's home loan lending activities and save examiners' time. Institutions identified as possibly engaging in unlawful discrimination can then be subjected to an even more comprehensive compliance examination.

Because of the foregoing advantages, § 338.4 currently requires certain FDIC-supervised institutions to compile data regarding home loan applicants in a log-sheet format. The applicants' race or national origin, sex, marital status, and age are entered on the log-sheet. In addition, the type of loan and the case disposition are noted. Finally, identifying information—that is, the name and address of the applicant, the address of the property, and the date of the application—are recorded. The bank must be able to trace each entry on the log-sheet to the relevant application file.

As explained below, Regulation C now requires certain banks to maintain a home loan application register that requires much of the same data as the FDIC log-sheet. Examiners can use the HMDA register as easily as the FDIC log-sheet when conducting the fair housing segment of a compliance examination. No purpose is served by requiring banks to maintain the FDIC log-sheet when similar information is as readily available to the examiner by reference to the HMDA register.

Home Mortgage Disclosure Act

Prior to the enactment of FIRREA, HMDA had required that covered institutions disclose annually their originations and purchases of mortgage and home improvement loans itemized by census tract and type of loan. The Federal Financial Institutions Examination Council ("FFIEC") produced tables based on such data showing aggregate lending patterns in each MSA. In this way, possible instances of "redlining" could be detected.

FIRREA made major revisions to the HMDA. Following the mandate of FIRREA, the FRB, which has rulemaking authority with respect to HMDA, revised Regulation C. Regulation C now requires certain financial institutions to report data on home loan applications, not just on originations and purchases as was formerly the case. In addition, Regulation C now requires certain institutions to report the race or national origin, sex, and income of the applicant or borrower. It does not require institutions to report the marital status and age of the applicant or borrower, however. The data must be presented on a register in the format prescribed by Regulation C.

FDIC Proposed Rule

With the implementation of the HMDA register, the FDIC is proposing to revise the existing FDIC log-sheet to conform it to the HMDA register. As a result of the proposed revision, the home loan data required to be displayed in log-sheet format pursuant to § 338.4(a)(2)(iv) will be identical to that required by Regulation C. Institutions currently required to keep a FDIC log-sheet can satisfy that requirement by maintaining the HMDA register on a timely basis, as further explained below.

FDIC staff analysis supports the view that the HMDA register will be an effective substitute for—and even an improvement over—the existing FDIC log-sheet. The HMDA register has the following advantages. First, the HMDA register captures more items of information than does the FDIC log-sheet. Second, data reported in HMDA register format are compiled and made publicly available. Third, data will be reported on a uniform basis by all covered financial institutions. Fourth, recordkeeping requirements will be simplified by eliminating repetitive forms. The first and second factors are described in more detail later in this document in the section comparing the current FDIC log-sheet to the HMDA register.

It should be noted that the current FDIC log-sheet and the HMDA register differ in one material respect: Marital status and are are reported on the current FDIC log-sheet but not on the HMDA register. Because the FDIC is conforming its current log-sheet to the HMDA register, marital status and age will no longer be reported in register format. However, this information remains available from loan applications on file at the institution. Further, the FDIC has received almost no housing-related complaints alleging discrimination on the basis of marital status or age over the past several years. The FDIC therefore believes that the advantages of utilizing the HMDA register format outweigh the disadvantages.

Although the FDIC proposes to conform the format of its log-sheet to that of the HMDA register, the FDIC's reporting requirements differ from those imposed by Regulation C in two other respects: (i) The class of institutions required by the FDIC to record information concerning race or national origin and sex is broader, and (ii) the FDIC requires the register to be updated on a more timely basis. Both the FDIC regulations and HMDA currently require banks to report in log-sheet or register format if the bank has a home or a branch office in a MSA and had total assets exceeding $10 million as of the end of the preceding calendar year. HMDA, however, provides that race or national origin, sex, and income data may, but need not, be collected by an institution with assets on the preceding December 31 of $30 million or less. 12 CFR 203.4(b). As a result of this provision, subject institutions maintain a HMDA register but need not complete that portion of the register concerning race or national origin, sex, and income. The FDIC does not have a similar exemption.

The FDIC is not incorporating into its fair housing lending regulations the Regulation C exemption that allows banks with assets of $30 million or less as of the end of the preceding calendar year to report data on race or national origin, sex, and income at their option. Instead, the proposed rule will require all insured State nonmember banks with an office in a PMSA, MSA, or CMSA that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year, to report the race or national origin, sex, and income of the applicant. The FDIC is of the opinion that the collection of such information in register format by all insured State nonmember banks with total assets in excess of $10 million and with an office in a PMSA, MSA, or CMSA not comprised of designated PMSAs, will allow for a more efficient compliance examination analysis.

Current FDIC regulations provide that a covered bank which had total assets of $50 million or less as of December 31 of the preceding calendar year and also received fewer than 25 home loan applications during that calendar year is not required to keep the FDIC log-sheet. 12 CFR 338.4(a)(2)(iv).

The FDIC proposes to delete its current exemption for covered banks which had total assets of $50 million or less as of December 31 of the preceding calendar year and also received fewer than 25 home loan applications. The FDIC proposes to delete this exemption in order to simplify its regulations and in order to make its regulations more consistent with the requirements of Regulation C. Further, as noted above, institutions that are exempt from maintaining a FDIC log-sheet by virtue of this provision are required by Regulation C to maintain a HMDA register (12 CFR 203.3(a)), although they may not be required to record data as to race or national origin, sex, and income. Consequently, deletion of the current exemption for covered banks which had total assets of $50 million or less and also received fewer than 25 home loan applications should not materially increase the recordkeeping burden for those banks.

The FDIC proposes to require that information reported in register format be kept current to within 30 days of the loan disposition date. At present, part 338 requires each bank to collect information during the initial contact with the applicant. 12 CFR 338.4(a)(2)(iii). The FDIC proposes to retain this requirement and to add a provision that all required data must be entered into the register within 30 calendar days after final action is taken on the loan application. In contrast, Regulation C does not specify a time limit for entering the required data on the register, but does require that the register be filed once a year. 12 CFR 203.4(a). The FDIC is of the opinion that the register must be kept up-to-date so that it can be a useful examination tool. Examiners conduct compliance examinations throughout the year. In order to effectively conduct the fair lending portion of these examinations, examiners need to have access to registers that are updated on a more frequent basis than once a year. Many banks use the registers for internal review and control. Registers that are continuously maintain will also better enable banks to monitor compliance with consumer protection laws and with the bank's own lending policies.

Part 338 Reorganized

As explained above, § 338.4 of the FDIC's fair housing lending regulations is, in part, a substitute monitoring program adopted under § 202.13(d) of Regulation B of the FRB. Furthermore, §§ 338.2 and 338.3 implement title VIII. Consequently, the definition currently employed in part 338 are based on the definitions used in Regulation B and title VIII. With the implementation of Regulation C and the HMDA register, however, the relevant definitions as to the register are those contained in Regulation C. In some instances, the same term (for example, "dwelling") is used in title VIII, Regulation B, and/or Regulation C, but is differently defined. As a result, home loans purchased and home improvement loans are required by Regulation C to be recorded on the HMDA register but are not covered by the recordkeeping requirements of Regulation B. Likewise, loans for multifamily dwellings (that is, dwellings for five or more families) are not covered by the Regulation B recordkeeping requirements, but are covered by Regulation C and so must be recorded on the HMDA register. On the other hand, loans for vacant land are covered by title VIII and the nondiscriminatory advertising and Equal Housing Lender Poster requirements, but are not subject to recordkeeping requirements. The FDIC proposes to reorganize part 338 in order to avoid any confusion that could be caused by the different definitions employed in title VIII, Regulation B, and Regulation C.

Comparison of Current FDIC Log-sheet and HUDA Register

Additional differences between the format of the current FDIC log-sheet and the HMDA register are listed below. As discussed above, the FDIC proposes to substitute the HMDA register for its current log-sheet. Consequently, all differences between the two forms will be resolved in favor of the HDA register.

1. *Type of loan application.* The HMDA register requires information as to the "type" of loan application (*i.e.*, for a conventional, government-insured or government-guaranteed loan). The current FDIC log-sheet does not have a similar requirement.

2. *Purpose of the loan.* At one time, home improvement loans were required to be reported on the FDIC log-sheet. The FDIC eliminated this requirement through a final rule published at 53 FR

30831 (Aug. 16 1988). However, home improvement loans must be reported on the HMDA register.

The HMDA register includes applications for the purchase, improvement, or refinancing of any dwelling for five or more families. The FDIC log-sheet, on the other hand, limits reporting requirements to loan applications where the dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence. In other words, loan applications for dwellings which are primarily commercial (i.e., dwellings for five or more families) are excluded from the FDIC log-sheet but included in the HMDA register.

The HMDA register does not record any data concerning loans on unimproved land offered for sale or lease for the construction or location thereon of any residential building. The FDIC log-sheet requires that such loans be recorded. FDIC staff believes that this difference does not result in a significant loss of data.

3. *Disposition of loan application.* The log-sheet contains a category for "case disposition" but limits the choices therein to "accepted," "rejected," "other action," and "adverse action" (as defined in § 202.2(c) of the FRB's Regulation B, 12 CFR 202.2(c)). The HMDA register requires, under the heading of "action taken," codes for "loan originated," "application approved but not accepted by applicant," "application denied," "application withdrawn," "file closed for incompleteness" and "loan purchased by your institution." In addition, the HMDA register has a column which permits, but does not require, codes indicating the specific reasons for denial. The log-sheet has no reasons-for-denial category.

4. *Applicant's income.* The HMDA register calls for the loan applicant's income, while the FDIC log-sheet does not.

5. *Loans purchased.* Institutions must indicate on the HMDA register the secondary market entity which purchases a covered loan when either (1) the covered bank originates and then sells such a loan within the same calendar year, or (2) the covered bank purchases and then sells such a loan within the same calendar year. The FDIC log-sheet does not require information about loans purchased by the secondary market.

6. *Availability of data collected.* The data collected in FDIC log-sheets is not made public and is not tabulated by computer; therefore, FDIC log-sheets do not allow for statistical analyses by interested parties. On the other hand, data obtained from HMDA registers is aggregated by the FFIEC. The FFIEC will prepare individual disclosure statements for each reporting institution plus aggregate tables for each MSA showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. The disclosure statements and tables will be available to the public at central data depositories located in each MSA. In addition, a financial institution must make its mortgage loan disclosure statement (to be prepared by the FFIEC) available to the public no later than 30 calendar days after the institution receives it from the FFIEC.

Paperwork Reduction Act

This proposed regulation contains two collections of information subject to approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The first collection is imposed on State nonmember banks by the FRB's Regulation B (Equal Credit Opportunity). This recordkeeping requirement, found at section 338.7, has been approved through August 31, 1992, by the OMB in accordance with the requirements of the Paperwork Reduction Act under control number 3064–0085. The estimated annual recordkeeping burden for this collection is summarized as follows:

Number of Respondents: 8,400
Number of Responses per Respondent: 37.6
Total Annual Responses: 316,122
Hours per Response: 1
Total Annual Burden Hours: 316.122

This collection would be unchanged by this proposed rule, although the section in which it appears has been renumbered from § 338.4 to § 338.7.

In the second collection, found at § 338.8, the FDIC proposes to revise its fair housing lending recordkeeping requirements in order to bring them into conformity with the HMDA, as amended by FIRREA, and implemented by Regulation C of the FRB. More specifically, the FDIC proposes to revise its current log-sheet in order to conform it to the format prescribed by Regulation C. Upon adoption of a final rule, banks subject to both the FDIC's log-sheet requirements and the FRB's HMDA register requirements will be able to satisfy those requirements by maintaining only the HMDA register on a timely basis. The estimated effect of this change is displayed in the table below.

	Current approved burden	Proposed new burden
Number of respondents	9,322	3,500
Number of responses per respondent	1	1
Total annual responses	9,322	3,500
Hours per response	7.9	23.7
Total annual burden hours	73,701	82,950

Use of the current log-sheet has been approved by the OMB through September 30, 1991, under control number 3064–0046. The revisions to the FDIC's log-sheet contained in this proposed rule have been submitted to the OMB for review pursuant to section 3504(h) of the Paperwork Reduction Act. This table repesents only the burden associated with maintaining a log-sheet to comply with part 338. Some State nonmember banks must currently maintain both a HMDA register to comply with Regulation C, and a log-sheet to comply with Part 338. By eliminating that duplicative recordkeeping requirement, this proposed rule would reduce the burden imposed on those state nonmember banks by an estimated total of 73,701 hours annually.

Comments concerning the accuracy of these burden estimates, and suggestions for reducing the burdens, should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064–0046), Paperwork Reduction Project (3064–0085), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–451, 550 17th Street NW., Washington, DC 20429.

Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the proposed rule will not have a significant adverse economic impact on a substantial number of small entities because it will eliminate the need to maintain two largely repetitive forms, as described above, and so reduce the information-recording burden on affected banks.

List of Subjects in 12 CFR Part 338

Advertising, Banks, banking, Civil rights, Credit, Fair Housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols.

For the reasons set out in the preamble, title 12, part 338 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 338—FAIR HOUSING

1. The authority citation for part 338 is revised to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1819, 1820(b); 12 U.S.C. 2801 *et seq.*; 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3605, 3608; 12 CFR part 202; 12 CFR part 203; 24 CFR part 110.

2. Section 338.1 is revised to read as follows:

§ 338.1 Purpose.

The purpose of this subpart A is to provide guidance on nondiscriminatory advertising, and, in addition, set forth the text of an equal housing lender poster that must be publicly displayed by insured State nonmember banks. This subpart A enforces provisions contained in section 805 of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 ("Fair Housing Act"), as amended by the Fair Housing Amendments Act of 1988, and implemented by rules and regulations enacted by the United States Department of Housing and Urban Development, 24 CFR parts 109 and 110.

§ 338.4 [Redesignated as § 338.7]

3. Section 338.4 is redesignated as section 338.7 and amended by revising paragraph (a)(1) introductory text, (a)(1)(i) heading, (a)(1)(i)(B)(*3*), (a)(2) introductory text, (a)(2)(i) heading, and (a)(2)(i)(B)(*3*), by redesignating footnote 2 in paragraph (a) as footnote 1, by redesignating footnote 3 in paragraph (a)(2)(ii) as footnote 2, by removing paragraph (a)(2)(iv); by revising paragraphs (c) and (d); by removing paragraphs (f) and (g), and by adding the OMB statement to the end of the section, as follows:

§ 338.7 Recordkeeping requirements.

(a) *Records to be retained.*[1] (1) A bank which has no office located in a primary metropolitan statistical area ("PMSA"), a metropolitan statistical area ("MSA"), or a consolidated metropolitan statistical area ("CMSA") that is not comprised of designated PMSAs, as defined by the Office of Management and Budget, or which has total assets as of December 31 of the preceding calendar year of $10 million or less shall request and retain the following information on home purchase loan applications (excluding applications received by telephone) for dwellings, occupied or to be occupied by the applicant as a principal residence, and containing one to four units:

(i) *Data on home purchase loan applicants.*

* * * * *

(B) * * *

(*3*) Location (street address, city, State, and zip code) of subject property.

* * * * *

(2) A bank which has an office in a PMSA, MSA, or CMSA that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year shall request the following information on home purchase loan applications (excluding applications received by telephone) for dwellings, occupied or to be occupied by the applicant, and containing one to four units:

(i) *Data on home purchase loan applicants.*

* * * * *

(B) * * *

(*3*) Location (street address, city, State, and zip code) of subject property.

* * * * *

(c) *Record retention.* Each bank shall retain the records required by this section for 25 months after the bank notifies an applicant of action taken on an application. This requirement also applies to records of home purchase loans which are originated by the bank and subsequently sold. The Federal Deposit Insurance Corporation may by written notice extend the retention period.

(d) *Substitute system.* The recordkeeping provisions of § 338.7 constitute a substitute monitoring program adopted under § 202.13(d) of Regulation B of the Board of Governors of the Federal Reserve System (12 CFR 202.13(d)). A bank collecting the data in compliance with § 338.7 will be in compliance with the recordkeeping requirements of 12 CFR 202.13 of Regulation B.

* * * * *

(Approved by the Office of Management and Budget under control number 3064–0085)

§ 338.3 [Redesignated as § 338.4]

4. Section 338.3 is redesignated as § 338.4.

§ 338.2 [Redesignated as § 338.3]

5. Section 338.2 is redesignated as § 338.3 and paragraph (a)(1) is revised to read as follows:

§ 338.3 Nondiscriminatory advertising.

(a) * * *

(1) With respect to written and visual advertisement, this requirement may be satisfied by including in the advertisement a facsimile of the logotype with Equal Housing Lender legend contained in the Equal Housing Lender Poster prescribed in § 338.4(b).

* * * * *

6. A new § 338.2 is added to read as follows:

§ 338.2 Definitions applicable to subpart A of this part.

For purposes of subpart A of this part:

(a) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Handicap* means, with respect to person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(d) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 338.5 [Redesignated as § 338.9]

7. Section 338.5 is redesignated as § 338.9 and the last sentence is revised to read as follows:

§ 338.9 Mortgage lending of a controlled entity.

* * * The written agreement shall provide that the controlled entity shall:

(a) Comply with the requirements of this part,

(b) Open its books and records to examination by the Federal Deposit Insurance Corporation, and

(c) Comply with all instructions and orders issued by the Federal Deposit

[1] These records are to be retained for the purpose of monitoring compliance and may not be used for the purpose of extending or denying credit or fixing credit terms where prohibited by law.

Insurance Corporation with respect to its home loan practices.

8. A new § 338.5 is added to read as follows:

§ 338.5 Purpose.

The purpose of this subpart B is two-fold. First, this subpart B requires insured State nonmember banks to collect information about the applicant's race and other personal characteristics in applications for home loans. In some instances, additional information concerning the applicant, the loan, and the subject property must be collected. Such information is collected in order to monitor an institution's compliance with the Equal Credit Opportunity Act of 1974 (15 U.S.C. 1691–91f), and serves as a substitute monitoring program as permitted by Regulation B of the Federal Reserve System (12 CFR 202.13(d)). Second, this subpart B notifies banks of their duty to maintain a register of home loan applications pursuant to Regulation C of the Federal Reserve System, and requires that the register be updated on a timely basis. The register format required by Regulation C is shown in appendix A to subpart B of this part. Appendix B to subpart B of this part refers banks to the instructions contained in Regulation C (12 CFR part 203) for completion of the register.

9. A new § 338.6 is added to read as follows:

§ 338.6 Definitions applicable to subpart B of this part.

For purposes of subpart B of this part—

(a) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested.

(b) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(c) *Dwelling* means a residential structure whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium, cooperative unit, or mobile or manufactured home.

(d) *Home improvement loan* means any loan that:

(1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and

(2) Is classified by the financial institution as a home improvement loan.

(e) *Home purchase loan* means any loan secured by and made for the purpose of purchasing or refinancing a dwelling.

10. A new § 338.8 is added to read as follows:

§ 338.8 Compilation of loan data in register format.

(a) A bank which has an office in a PMSA, MSA, or CMSA that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year shall keep a register on applications for, and originations and purchases of, home purchase loans and home improvement loans by bank office. The register shall contain all of the information reflected on the sample form in appendix A to subpart B of this part (including race or national origin, sex, and income) and shall be in the format prescribed in appendix A to subpart B of this part. The bank shall be able to trace each entry on the register to the relevant application file, using an identifying number or code that can be used to retrieve the loan or application file.

(b) Notwithstanding any other provision of this part 338, the Board of Directors may require any bank to keep a register on applications for, and originations and purchases of, home purchase loans (including refinancings) and home improvement loans by bank office. The register shall contain all of the information reflected on the sample form in appendix A to subpart B of this part (including race or national origin, sex, and income) and shall be in the format prescribed in appendix A to subpart B of this part. The bank shall be able to trace each entry on the register to the relevant application file, using an identifying number or code that can be used to retrieve the loan or application file.

(c) All information required by this § 338.8 must be entered on the register within 30 calendar days after the loan application is finally disposed of (the application is denied or the loan goes to closing).

(d) *Record retention.* Each bank shall retain a copy of the completed register required by this § 338.8 for a period of not less than two years after its submission to the Federal Deposit Insurance Corporation pursuant to regulation C of the Federal Reserve System.

(e) *Review of records.* Each bank shall make all information collected pursuant to paragraph (a) of this section available to FDIC examiners for review upon request.

(Approved by the Office of Management and Budget under control number 3064–0046)

§§ 338.1 through 338.4 [Designated as Subpart A]

11. Sections 338.1 through 338.4 are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Advertising

§§ 338.5 through 338.9 [Designated as Subpart B]

12. Sections 338.5 through 338.9 are designated as subpart B and a new subpart heading is added to read as follows:

Subpart B—Recordkeeping Requirements

13. Appendix A to the part is redesignated as appendix A to subpart B and revised to read as follows:

BILLING CODE 6714-01-M

Appendix A to Subpart B of Part 338—Loan Application Register

LOAN/APPLICATION REGISTER Page ____ of ____

Form FR HMDA-LAR

Name of Reporting Institution

City and State

Control number (agency use only)

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant						
												Race or National Origin		Sex				
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Occupancy	Amount in thousands	Type	Date (mm/dd/yy)	MSA Number	State Code	County Code	Census Tract	A	CA	A	CA	Income in thousands	Type of Purchaser of Loan	Reason(s) for Denial (Optional)

BILLING CODE 6714-01-C

14. A new appendix B to subpart B is added to read as follows:

Appendix B to Subpart B of Part 338—Instructions on Maintaining Loan Application Register

The format of the Loan Application Register is identical to that required by Regulation C of the Board of Governors of the Federal Reserve System. Instructions for completing the Loan Application Register are set forth at 12 CFR part 203, Appendix A, section II, entitled "Completion of Register."

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of April 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-10804 Filed 5-7-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-93-AD]

Airworthiness Directives; Boeing Model 737 Series Airplane

AGENCY: Federal Aviation Adminsitration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require the installation of additional protection on the wire bundles in circuit breaker panel to guard against damage from chafing and to protect the battery bus wiring from overloading. This proposal is prompted by reports of arcing and smoke emanating from the panel and discovery of undersized wiring to a battery bus. These conditions, if not corrected, could result in smoke and fire in the cockpit emanating from the panel and loss of safety essential systems.

DATES: Commensts must be received not later than July 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-93-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew S. Wade, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2751. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the susbstance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-93-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Three operators of Model 737 series airplanes reported observing sparks and smoke emanating from the P6 electrical panel. Two incidents resulted in damage to more than 22 wires. The arcing and smoke were a direct result of abrasion between the quick release fastener, an adjacent nutplate, and the wire bundle contained within the P6-2 Circuit Breaker Panel. During a production line check by the manufacturer, another area of potential wiring interference was found at the access to the P6 disconnect panel. These conditions, if not corrected, could result in a fire behind the P6 panel and the loss of safety essential systems.

In addition, a fault analysis by the manufacturer reported finding a potential failure condition on some airplanes which could result in an overload to the 28 volt DC battery bus wiring located in the P6-2 Circuit Breaker Panel. Such an overload condition, if not corrected, could also result in a fire behind the P6 panel and subsequent loss of essential systems.

The FAA has reviewed and approved Boeing Service Bulletins 737-24-1077, Revision 1, dated August 16, 1990, which describes the modifications necessary to protect the wire bundles in the P6 panel from damage caused by chafing; and 737-24-1084, dated October 11, 1990, which describes replacement of the undersized wire in the P6-2 Circuit Breaker Panel, necessary on certain airplanes.

Since these conditions are likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require modifications to the P6 panel and associated wire bundles in accordance with the service bulletins previously described.

There are approximately 682 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 384 airplanes of U.S. registry would be affected by this AD. It would take approximatley 10 manhours per airplane to accomplish both modifications on 324 airplanes and 6 manhours per airplane to replace the undersized wire on the other 60 airplanes. The average labor cost would be $55 per manhour. Based on these figures, the cost impact on U.S. operators is estimated to be $198,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons disucssed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules

Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Adminsitrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes as listed in Boeing Service Bulletin 737–24–1077, Revision 1, dated August 16, 1990, and Boeing Service Bulletin 737–24–1084, dated October 11, 1990, certificated in any category. Compliance required within 6 months after the effective date of this AD, unless previously accomplished.

To prevent chafing of wires and electrical overload of wires, and to remove the potential for a fire in the cockpit, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 737–24–1077, Revision 1, dated August 16, 1990: Modify the wire bundles and install a capped quick release receptacle and nutplace in accordance with the service bulletin.

B. For airplanes listed in Boeing Service Bulletin 737–24–1084, dated October 11, 1990: Replace the undersized wire with a 12 gage wire in the P6–2 Circuit Breaker Panel in accordance with the service bulletin.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–10879 Filed 5–7–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–76–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require installation of modified leading edge slat offset gearbox "No-Back" brakes. Additionally, repetitive inspections of the leading edge slat drive system would be required in the interim for airplanes on which the existing No-Back brakes have not been reworked to limit the amount of grease used in the offset gearbox. This proposal is prompted by ground inspection reports of slat No-Back brakes not functioning properly due to oil contamination, and two incident reports of asymmetric leading edge slats resulting from a torque tube disconnect. A leading edge slat torque tube disconnection, combined with a latent failure of the No-Back brake(s), if not corrected, could result in uncommanded asymmetric movement of the leading edge slats, which could degrade lateral flight control and/or structural damage to the slat.

DATES: Comments must be received no later than June 26, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–76–AD, 1601 Lind Avenue SW., Renton, Washington, 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–76–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators have reported that approximately 70% of the leading edge slat No-Back brakes did not function properly during limited random ground inspections. It has been determined that the No-Back brakes did not function properly due to oil contamination of the No-Back brake stators and rotors. There also have been two reports of disconnection of the leading edge slat torque tube during flight, which resulted in asymmetric slats. In response to the torque tube disconnection problems, the FAA issued AD 90–09–51, Amendment 39–6659 (55 FR 29003, July 17, 1990), and AD 90–26–51, Amendment 39–6881 (56 FR 4538, February 5, 1991), to correct these problems.

Currently, there are no periodic maintenance requirements to check the

performance of the No-Back brake. Any failures of the No-Back brake could be latent for the entire life of the aircraft. A leading edge slat torque tube disconnection, combined with a latent failure of the No-Back brake(s), could result in uncommanded asymmetric movement of the leading edge slats. This condition could degrade lateral flight control and/or cause structural damage to the slats; it could occur in any flight condition.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–27A0095, Revision 2, dated January 31, 1991, which describes procedures for visual inspection of the leading edge slat drive system, repair or replacement of failed parts, and modification of all offset gearbox No-Back brake. The modified No-Back brake assembly with phenolic reinforced fiber material bonded to the stators is immersed in grease by design. This No-Back brake assembly has successfully completed a qualification test.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of all leading edge slat offset gearbox No-Back brakes with modified No-Back brakes in accordance with the service bulletin previously described.

Additionally, repetitive inspections of the leading edge slat drive system and repair or replacement of failed parts would be required in the interim until modified No-Back brakes are installed, for those airplanes on which the existing No-Back brakes have not been reworked to limit the amount of grease used in the offset gearbox. Repetitive inspections of the leading edge slat drive system would not be required for those airplanes on which the existing No-Back brakes have been reworked to limit the amount of grease used in the offset gearbox.

There are approximately 364 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 131 airplanes of U.S. registry would be affected by this AD, that it would take approximately 392 manhours per airplane to accomplish the required No-Back brake modifications, and that the average labor cost would be $55 per manhour. The required parts would be provided by the manufacturer at no charge to the operator. It is estimated that 120 of the 131 U.S. registered airplanes would require a leading edge slat drive system inspection prior to installation of the modified No-Back brakes, that it would take approximately 72 manhours to accomplish the required inspection, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,299,560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes; Groups 1, 2, and 3, as listed in Boeing Alert Service Bulletin 767–27A0095, Revision 2, dated January 31, 1991; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncommanded asymmetric movement of the leading edge slats due to failure of the No-Back brake combined with disconnect of the torque tube, accomplish the following:

A. For Group 1 and 2 airplanes with leading edge slat offset gearbox No-Back brakes that have not been reworked prior to the effective date of this AD to limit the amount of grease used in the offset gearbox, in accordance with Accomplishment Instructions, Part V, Offset Gearbox Inspection and Interim Rework of Boeing Alert Service Bulletin 767–27A0095, Revision 1, dated February 22, 1990, or Revision 2, dated January 31, 1991:

1. Within 2,000 flight hours after the effective date of this AD and thereafter at intervals not to exceed 3,000 flight hours, conduct a torque tube and overtravel stop inspection of the inboard and outboard leading edge slat drive system in accordance with the Accomplishment Instructions, Part I, of Boeing Alert Service Bulletin 767–27A0095, Revision 2, dated January 31, 1991. Repair or replace failed parts at the time specified in, and in accordance with the instructions provided in, parts I, II, III, IV, VI, and VII of that service bulletin, as applicable.

2. Within 18 months after the effective date of this AD, replace all inboard and outboard leading edge slat offset gearboxes with modified offset gearboxes in accordance with the Accomplishment Instructions, Part VII, of Boeing Alert Service Bulletin 767–27A0095, Revision 2, dated January 31, 1991. Accomplishment of this modification constitutes terminating action for the requirements of paragraph A.1. of this AD.

B. For all Group 3 airplanes and for those Group 1 and 2 airplanes on which the leading edge slat offset gearbox No-Back brakes have been reworked prior to the effective date of this AD to limit the amount of grease used in the offset gearbox, in accordance with the Accomplishment Instructions, Part V, Offset Gearbox Inspection and Interim Rework of Boeing Alert Service Bulletin 767–27A0095, Revision 1, dated February 22, 1990, or Revision 2, dated January 31, 1991: Within 24 months after the effective date of this AD, replace all inboard and outboard leading edge slat offset gearboxes with modified offset gearboxes in accordance with the Accomplishment Instructions, Part VII, of Boeing Alert Service Bulletin 767–27A0095, Revision 2, dated January 31, 1991.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 26, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10878 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-75-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require the installation of stronger springs in the rear and forward passenger and service doors, and an increase in the clearance between the side baulk blade and its abutment. This proposal is prompted by a report which indicates that constant high outward force on the door during the opening sequence may prevent the side baulk blade from retracting. This condition, if not corrected, could result in the crew or passengers not being able to open the doors during an emergency situation.

DATES: Comments must be received no later than July 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-75-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-75-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. There has been a recent report indicating that constant high outward force on the door during opening sequence may prevent the side baulk blade from retracting. This condition, if not corrected, could result in the crew or passengers not being able to open the doors during an emergency situation.

British Aerospace has issued Service Bulletin 52-89-00668H, J, K & L, dated November 21, 1990, which describes procedures to modify the forward and rear passenger and service doors. The modification consists of installing stronger springs to increase tension at the side baulk blade from 11 pounds to 18 pounds. The modification also increases the clearance between the side baulk blade and its abutment, and shortens the plate which anchors the side baulk return springs. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the rear and forward passenger and service doors in accordance with the service bulletin previously described.

It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 50 manhours per airplane to accomplish the required actions, and that the average labor costs would be $55 per manhour. The required parts will be supplied to the operators at no cost by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $203,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action in contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146–100A, –200A, and –300A series airplanes; as listed in British Aerospace Service Bulletin 52–89–00668H, J, K & L, dated November 21, 1990, on which Modifications HCM00668H, J, K & L, and HCM00931A have not been accomplished; certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To ensure that the forward and rear passenger and service doors open during an emergency situation, accomplish the following:

A. Install stronger springs to increase tension at the side baulk blade in the right and left rear and forward passenger and service doors (Modification HCM00668H, J, K & L); and increase the clearance between the side baulk blade and its abutment, and shorten the plate which anchors the side baulk return springs (Modification HCM00931A); in accordance with the Accomplishment Instructions of British Aerospace Service Bulletin 52–89–00668H, J, K & L, dated November 21, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this Ad.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–10880 Filed 5–7–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–92–AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3–30 and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3–30 series airplanes, and certain Model SD3–60 series airplanes, which currently requires changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars. This proposed action would require installation of a revised modification for changing the subject power source on certain airplanes, clarify the accomplishment procedures to ensure that proper methods are used to install the modification, and require a related change to the FFA-Approved Airplane Flight Manual (AFM). This proposal is prompted by the development of a revised modification kit necessary for installation in certain airplanes, and revised procedures to address the differences in busbar insallation among the affected airplanes. This condition, if not corrected, could result in incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure.

DATES: Comments must be received no later than July 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–92–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SE., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communmications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the propsed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–92–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 4, 1991, the FAA issued AD 91–04–06, Amendment 39–6897 (56 FR 5752, February 13, 1991), to require changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars on Model SD3–30 and SD3–60 series airplanes. That action was prompted by reports of loss of electrical power to the pilot/static heaters due to a generator failure. This condition, if not corrected, could result in incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure.

Since issuance of that AD, Short Brothers has issued Revision 2 to Service Bulletin SD330–24–25, and Revision 3 to Service Bulletin SD360–2416, both dated November 29, 1990. Due to differences in busbar installations, the instructions for changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars have been revised and are explained in these revisions to the service bulletins. These revised service bulletins also describe revised modification kits necessary for installation on airplanes having certain serial numbers; the original modification

kit shipped to operators must be exchanged for the revised kit in order to ensure that the addressed problems are corrected. The revised service bulletins refer to certain Airplane Flight Manual (AFM) revisions related to procedures necessary to be followed during electrical system emergencies on airplanes incorporating the pilot static heater electrical power source modification.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 91–04–06 with a new airworthiness directive that would require changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars in accordance with the service bulletins previously described, and revising the AFM in accordance with the revisions referred to above.

It is estimated that 120 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The required modification kit will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,900.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, on or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flecibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegate to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6897 (56 FR 5752, February 13, 1991), AD 91–04–06, with the following new airworthiness directive:

Short Brothers, PLC: Applies to Model SD3–30 series airplanes, as listed in Short Brothers Service Bulletin SD330–24–25, Revision 2, dated November 29, 1990; and Model SD3–60 series airplanes, as listed in Short Brothers Service Bulletin SD360–24–18, Revision 3, dated November 29, 1990; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of power to the pitot/static heaters and subsequent incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure, accomplish the following:

A. For Model SD3–30 series airplanes, Serial Numbers SH3002 through SH3072: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with Part A of the Accomplishment Instructions in Short Brothers Service Bulletin SD330–24–25, Revision 2, dated November 29, 1990. Following accomplishment of this modification, revised the Emergency and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) by inserting Amendment Number SB 3.3–P15 or 3.6–P11, as applicable.

B. For Model SD3–30 series airplanes, Serial Numbers SH3073 and subsequent: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with Part B of the Accomplishment Instructions in Short Brothers Service Bulletin SD330–24–25, Revision 2, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Procedures Sections of the FAA-approved AFM by inserting Amendment Number SB 3.3–P15 or 3.6–P11, as applicable.

C. For Model SD3–60 series airplanes, Serial Numbers SH3601 through SH3619: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the Part A of the Accomplishment Instructions in Short Brothers Service Bulletin SD360–24–18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Sections of the FAA-approved AFM by inserting Amendment Number SB 4.3–P18, 4.6–P11 or 4.8–P8, as applicable.

D. For Model SD3–60 series airplanes, Serial Numbers SH3620 through SH3676: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the Part B of the Accomplishment Instructions in Short Brothers Service Bulletin SD360–24–18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revised the Emergency and Normal Sections of the FAA-approved AFM by inserting Amendment Number SB 4.3–P18, 4.6–P11 or 4.8–P8, as applicable.

E. For Model SD3–60 series airplanes, Serial Numbers SH3677 through SH3762: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the Part C of the Accomplishment Instructions in Short Brothers Service Bulletin SD360–24–18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revised the Emergency and Normal Procedures Sections of the FAA-approved AFM by inserting Amendment Number SB 4.3–P18, 4.6–P11, or 4.8–P8, as applicable.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directortate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–10881 Filed 5–7–91; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3955-4]

NO_x Emission Reduction Provisions and Announcement of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Intent to form an Advisory Committee To Negotiate Proposed Regulations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is considering establishing an advisory committee to negotiate regulations for reducing the emissions of nitrogen oxides (NO_x) from existing coal-fired boilers at electric power plants. These negotiations will help develop rules for two specific types of coal-fired utility units: Tangentially-fired boilers, and dry bottom wall-fired boilers. When these boilers are required to meet their Phase I SO_2 limitations (usually January 1, 1995), they will also need to comply with the NO_x emission rates set forth in these new regulations. The regulations will include requirements of low NO_x burner (LNB) technology, NO_x annual emission rates, and alternative emission limitations and emissions averaging. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act of 1990 (NRA), and would consist of representatives of the interests that will be significantly affected by the outcome of this rule.

EPA requests public comment on whether:

- It should establish a Federal Advisory Committee;
- It has properly identified interests it believes are affected by the key issues listed above; and
- Regulatory negotiation is appropriate for this rulemaking, and the extent to which the issues, and procedures are adequate and appropriate.

DATES: EPA will conduct a public meeting concerning this notice on May 22, 1991 in Alexandria, Virginia. The meeting will be held from 9:30 a.m. to 4 p.m. Comments on the issues raised by this notice and any applications and nominations for membership on the negotiating committee must be received by June 7, 1991.

ADDRESSES: The public meeting will be held at 1199 N. Fairfax Street, Alexandria, VA. Comments pertaining to the NO_x rule should be submitted (in duplicate if possible) to Air Docket Section (LE-131), EPA, attention Air Docket #A-90-52, 401 M Street, SW., Washington, DC 20460. A copy should also be sent to Zofia Kosim, ANR-445, EPA, Acid Rain Division, 401 M Street SW., Washington, DC 20460. Docket #A-90-52 contains materials relevant to this notice and may be inspected at room 1500M, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC between 8:30 a.m. and Noon, and 1:30 p.m. and 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee maybe charged for copying.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the establishment of the negotiation committee and associated administrative matters, contact Chris Kirtz, Director, Regulatory Negotiation Project, Regulatory Management Division, US EPA (PM -223Y), 401 M Street SW., Washington, DC 20460, telephone (202) 382-7565. For information pertaining to the NO_x rule and associated issues, contact Zofia Kosim at the address provided above or by phone (202) 475-9400.

SUPPLEMENTARY INFORMATION

Outline of Notice

I. EPA's Regulatory Negotiations Project

EPA established the Regulatory negotiations Project in 1983 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations which could be implemented in a less adversarial setting.

Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal. All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

EPA has developed criteria for evaluation of potential items for negotiation. To qualify under EPA's selection criteria, an item must:

- Be planned for proposal;
- Have a relatively small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating;
- Present a limited number of related issues for which sufficient information is available for resolution; and
- Have a time factor that lends some urgency to reaching consensus.

The eight negotiations conducted to date have aided the Agency in better defining the issues and in crafting better approaches. The eight regulatory negotiations were:

- Nonconformance Penalties under the Clean Air Act, as amended; Final rule: August 30, 1985.
- Emergency Pesticide Exemptions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Final rule: January 15, 1986.
- Farmworker Protection Standards for Agricultural Pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Proposed rule: July 8, 1988.
- Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986 (AHERA); Final rule: October 30, 1987.
- New Source Performance Standards for Woodburning Stoves under the Clean Air Act; Final rule: February 26, 1988.
- Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984. Final rule: July 26, 1988.
- Minor Permit Modifications under the Resource Conservation and Recovery Act (RCRA); Final rule: September 28, 1988.
- Fugitive Emissions from Equipment Leaks under the Clean Air Act (CAA); Committee agreement: December 1990.

In December 1986, the Program Evaluation Division of EPA's Office of Policy Planning and Evaluation completed an assessment of the regulatory negotiations program. The study confirmed that negotiation is especially appropriate in situations which involve the resolution of a limited number of related issues, none of which involve fundamental questions of value or extremely controversial national policy. The study further concluded that:

- Negotiated rulemaking can produce rules that are more pragmatic with

better environmental results while still meeting statutory requirements.

• Negotiated rules are also more likely to be acceptable to the affected industries, the public interest sector, and State and local governments involved in developing them.

• Negotiation may also result in earlier implementation of a rule by reducing the time it takes to proceed from proposed to final rulemaking.

EPA believes that the benefits to all parties of regulatory negotiation are substantial, and is committed to continued use of regulatory negotiation and other consensus-based process for rulemaking when appropriate.

On November 29, 1990, the President signed the Negotiated Rulemaking Act of 1990 which has as its purpose "to establish a framework for the conduct of negotiated rulemaking" and "to encourage agencies to use the process when it enhances the informal rulemaking process."

II. Subject and Scope of the Rule Proposed for Negotiation

The subject of the proposed negotiated rulemaking process is the NO_x rule for tangentially-fired and dry bottom wall-fired coal-fired boilers affected in Phase I.

The regulations are required by title IV of the recently enacted Clean Air Act Amendments of 1990. The purpose of title IV is to reduce the adverse effects of acid deposition through reductions in the annual emissions of nitrogen oxides and sulfur dioxide from fossil fuel combustion processes in the lower-48 states and the District of Columbia. Section 407 of title IV requires that the EPA set allowable rates for the emission of nitrogen oxides from utility units.

This section contains provisions for reducing the contributions made by all types of coal-fired electric utility boilers to acid deposition, and requires that these reductions will be accomplished through compliance with prescribed emission limitations by specified deadlines. The prescribed emission limitations may be met either directly or through alternative methods of compliance.

EPA is here proposing that the NO_x rule for tangentially-fired and dry bottom wall-fired coal-fired utility boilers affected in Phase I be developed through negotiation.

A. Statutory Provisions

Emission Limitations

Section 407(b)(1) of the Act as amended establishes and lists maximum allowable NO_x emission rates for tangentially-fired and dry bottom wall-fired (other than units applying cell burner technology) coal-fired utility boilers affected in Phase I at 0.45 lb/mmBtu and 0.5 lb/mmBtu, respectively. A provision of the Act authorizes the Administrator to set a less stringent rate for any type of utility boiler, only if the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology. Affected utility boilers must comply with the established emission rates by January 1, 1995. After January 1, 1995, it shall be unlawful for any tangentially-fired and dry bottom wall-fired unit that is an affected coal-fired unit on that date to emit nitrogen oxides in excess of the emission rates set by the Administrator.

The applicable emission rates for tangentially-fired units, dry bottom wall-fired units, wet bottom wall-fired units, cyclones, boilers applying cell burner, and other types of boilers affected in Phase II will be established by January 1, 1997 in a separate rulemaking process. Revised performance standards to Section 111 for NO_x emissions from fossil fuel-fired steam generating units will be developed in another rulemaking process.

Alternative Emission Limitations

Section 407(d) requires that the permitting authority, upon request of an owner or operator of an affected unit, authorize an emission limitation less stringent than the applicable emission limitation upon a determination that a unit cannot meet the applicable limitation using appropriate control technology. The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations developed during the proposed regulatory negotiation process, that the owner or operator has properly installed appropriate control equipment designed to meet the applicable annual emission rate and operated such equipment for a period of fifteen months (or such other period of time as determined by the Administrator through the regulations). In addition, the owner or operator must provide operating and monitoring data for such period to demonstrate that the unit cannot meet the applicable emission rate, and specify an emission rate that such unit can meet on an annual average basis.

If the owner or operator of tangentially-fired and dry bottom wall-fired units affected in Phase I demonstrates to the satisfaction of the Administrator the technology necessary to meet the applicable emission rates is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit.

Emissions Averaging

Section 407(e) states that in lieu of complying with the applicable emission limitations, the owner or operator of two or more units subject to the applicable emission limitations, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that: (1) The actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limtiations set in accordance with the applicable emission rates. If the permitting authority determines that these conditions can be met, the permitting authority shall issue operating permits for such units that allow contemporaneous annual emissions limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits.

B. Selection of Regulatory Rulemaking

EPA believes that the NO_x emission reduction rule is appropriate for development through negotiation. With help of an independent convener, EPA has made a preliminary inquiry of potential parties and representatives of identified interests to determine if the regulations satisfy the applicable selection criteria for negotiation. On the basis of this inquiry, EPA believes that the regulation meet the selection criteria and the negotiations can be successful. Affected interests are relatively small in number, and the convener's initial contacts indicate that an appropriate balance and mix of groups will be willing to participate in good faith. The Agency also believes that a committee comprised of representatives of these groups could reach a consensus in time for EPA to issue proposed regulations. EPA has adequate resources to devote to the negotiations, and it would use the consensus of the committee as the basis of the proposed NO_x rule.

C. Underlying Issues

EPA has identified the following issues which will be addressed in developing the NO_x rule for tangentially-fired and dry bottom wall-fired units affected in Phase I:

1. A provision of section 407 authorizes the Administrator to set a less stringent emission rate only if the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology.

2. In considering whether to set a less (or more) stringent emission rate for a boiler type, the Administrator must determine the parameters for measuring emission rates. For example, the Administrator may consider whether it is appropriate to average emissions from several units. What should be the parameters for measuring and averaging emission rates?

3. Some utilities may face difficulty in purchasing and installing low LNB technology prior to the January 1, 1995 deadline. What is an appropriate basis for granting an extension of the deadline for compliance for a boiler unit will be evaluated.

4. What is the relationship between system load factors and NO_x emission rates? What effect does operation and maintenance have on this relationship?

5. Are fuel savings or higher boiler efficiency a byproduct of any of the NO_x control technologies?

6. It may be possible to reduce NO_x emission rates below the statutory targets. What incentives might produce early voluntary compliance with the NO_x rules and improve emission rates from individual boilers?

7. What should be the relationship between this NO_x emission rule and other provisions of the Act, including ozone nonattainment, continuous emission monitoring, and Phase II boilers?

8. Should the annual average lbs/MMBtu emission rate be converted to tons per year to facilitate the development and implementation of the alternate and averaging provisions? If so, should this be done? Should a tons per year value take precedence over the lbs/MMBtu limit?

D. Potential Interests and Participants

With the assistance of a convener, EPA has identified the following interests as those likely to be significantly affected by the NO_x emission reduction rule:

—Electric utility industry.
—Manufacturers of LNB technology and boilers.
—Environmental interest groups.
—State environmental protection, consumer, and utility regulatory agencies.
—The U.S. Department of Energy.
—Trade unions.

EPA proposes that the following persons be named to negotiate the proposed regulations if the Agency ultimately decides to proceed with the negotiations. These persons have indicated their willingness to participate: Randall E. Rush of Southern Company Services, Vincent J. Brisini of Pennsylvania Electric Company, Howard B. Couch of the Ohio Edison Company, Kris A. McKinney of Wisconsin Power and Light Company, Janet M. Anderson of the Northern States Power Company, John D. Kane of the Illinois Power Company, Bill H. Bonner of Texas Utilities, Allen Jensen of Babcock & Wilcox, John H. Eggers of ABB/Combustion Engineering, Inc., Vincent M. Albanese of Nalco, Ben Yamagata of Clean Coal Technology Coalition, Marchant Wentworth of the Izaak Walton League, David Hawkins of the Natural Resources Defense Council, Nancy Seidman of NESCAUM, James R. Hambright of the Pennsylvania Department of Environmental Resources, Scott Rubin of the Pennsylvania Consumer Council, John Pratapas of the Gas Research Institute, Doublas Carter of the U.S. Department of Energy, Ashley Brown of the Ohio Public Utility Commission, William J. Klienfelter of the International Brotherhood of Teamsters, and Larry Kertcher fo the U.S. Environmental Protection Agency.

III. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal Government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

B. Participants

The number of participants in the group is estimated to be about 15 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiatons. One purpose of this notice is to help determine whether the standard that EPA is developing would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individiual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation in the neogitating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule; and
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee and the date of the first meeting, unless: (1) EPA decides, based on comments or other relevant considerations, that such action is inappropriate, or (2) in the event EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the **Federal Register.**

E. Tentative Schedule

EPA will hold a public meeting on May 22, 1991 at the address stated earlier in this notice. This meeting is open and potential participants are encouraged to attend. The purpose of this meeting is to: (1) Discuss whether negotiations should proceed, and if so, discuss how the negotiations should proceed and how the committee should function, (2) consider what issues and topics should and should not be covered, (3) identify participants on working groups, (4) answer questions, and (5) address any other procedural issues which may arise such as future meeting dates.

If EPA ultimately decides to establish the negotiating committee and its charter is approved, the Agency will publish a notice in the **Federal Register** announcing the committee's first meeting. It is expected that this meeting will be held in Alexandria, VA on June 12 at 1199 N. Fairfax Street, from 9 a.m. to 4 p.m. At this meeting, participants will complete action on procedural

matters, determine how best to address the principal issues, and begin to address them.

IV. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interest. This applies to EPA as well, and Larry Kertcher, Chief, Source Control Branch, Office of Atmospheric and Indoor Air Programs will be EPA's representative.

C. Administrative Support and Meetings

EPA's Regulatory Management Division will supply logistical, administrative, and management support. Meetings will be held in the Washington area at the convenience of the Committee.

D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meeting which they consider most appropriate.

E. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

F. Failure of Advisory Committee To Reach Consensus

In the event the Committee is unable to reach consensus, EPA will proceed to develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Agency will evaluate whether the Committee should continue.

G. Record of Meetings

In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register**. Such meetings will be open to the public.

Dated: May 3, 1991.

Richard Morgenstern,

Acting Assistant Administrator, Office of Policy, Planning, and Evaluation.

[FR Doc. 91–11070 Filed 5–7–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 721

[OPTS–50577C; FRL–3892–9]

Aromatic Diamines; Extension of Comment Period for Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed significant new use rule (SNUR) for aromatic diamines. As published in the **Federal Register** of March 28, 1991 (55 FR 12880), the comments were to be received on or before April 27, 1991. Two commenters, who are already engaging in commercial activities with one of these substances, requested additional time to prepare their responses. EPA is therefore extending the comment period in order to give all interested persons time to comment.

DATES: Written comments must be submitted to EPA by June 26, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. E–105, 401 M St., SW., Washington, DC 20460. Each comment must include the docket control number OPTS–50577C. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This extension of time will allow the public to review and comment on information that EPA considered in developing this proposal but which was not available in the docket at the time the proposal was issued. The docket now includes the following additional information: (1) Supporting data for the section 5(e) order for P–86–501/503; (2) toxicity data on P–86–503 provided by the submitter of the PMN for P–86–503; (3) four studies provided by one of the commenters; (4) EPA's assessment of these four studies; and (5) public comments submitted on this rulemaking. In developing this proposal, EPA considered the four studies on P–86–503 that were provided by a commenter but determined that the studies did not fundamentally alter EPA's analysis of the risks of this substance. In addition, the commenters have claimed that the SNUR did not take into account ongoing commercial activities of P–86–503. To date, the Agency has not received detailed information on such uses which would enable EPA to verify that the uses were ongoing. In addition, the submitter has waived CBI claims on the chemical substance represented by P–86–503. Its specific name is 4,4'-phenylene bis(1-methylethylidene)bisbenzenamine.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses,

Dated: May 1, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91–10900 Filed 5–7–91; 8:45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 56, No. 89
Wednesday, May 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

McCoy Integrated Resource Projects, Gifford Pinchot National Forest, Lewis and Skamania Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Randle Ranger District, USDA, Forest Service will prepare an environmental impact statement on a proposal to implement projects under the 1990 Gifford Pinchot National Forest Land and Resource Management Plan (Forest Plan). All proposed projects will comply with the Forest Plan which provides the overall guidance for management of the area.

The project planning area is in the Yellowjacket and McCoy Creek Drainages, in an area that includes a portion of the Dark Divide Roadless Area, on the Randle Range District. This area is located approximately 10 miles southeast of Randle, Washington. Specific activities for this proposal are integrated resource projects, some will not need analysis under the McCoy Environmental Impact Statement but are noted to indicate the integrated nature of the planning and analysis. The projects include but are not limited to: (1) Harvest of approximately 33 million board feet of timber from seven timber sales; (2) development of an associated road system of about 10 to 15 miles of new road, development of a long term access management plan for Forest Service Road 29 and all other roads that provide access to recreation sites and timber harvest activities; (3) replacement of the Langille Bridge on the existing road system; (4) reforestation of all harvested acres; (5) precommercial thinning, utilization of Pacific yew from harvest units, stewardship through contracts for bough and Christmas tree cutting, fertilization, and activities related to genetic tree selection and cultivation; (6) installation of temporary fish monitoring stations in Upper McCoy, Upper and Lower Yellowjacket and Pinto Creeks, installation of fish habitat structures, and channel cross-section studies; (7) erosion control and repair of past flood related road failures; (8) wildlife habitat improvements and enhancements such as browse planting, forage seeding, waterfowl nest structures, development of existing water impoundments for habitat, road closures, interpretive signing, and mountain goat habitat improvements; (9) reconstruction and relocation where needed of the Langille, Juniper and High Bridge Trails; (10) construction of access trails to form loops with longer ridge trails; (11) construction of the McCoy Horse Camp and several dispersed camping sites; (12) rehabilitation of Waddle Cabin; (13) data collection and interpretation of cultural resources specific to the McCoy Creek Mining History.

Implementation of the projects is scheduled for fiscal years 1992 through 1994. The Gifford Pinchot National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process for the proposal in order to provide interested and affected people information about how they may paticipate in and contribute to the planning process and final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by June 10, 1991.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Harry Cody, District Ranger, Randle Ranger District, Randle WA 98377.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and Environmental Impact Statement to Laura B. Caruso, Team Leader, Randle Ranger District, phone (206) 497–7565.

SUPPLEMENTARY INFORMATION: The proposed actions are listed in Appendix A or D of the Forest Plan. The major parts of the proposal are summarized below:

TIMBER SALES

Fiscal year	Sale name	Legal description	Volume MMBF	New road miles	Harvest method
1992	Kidd North	T11N, R8E, Sec. 34, 35, WM.	4.0	3.5	ComThin/ Regen.
1992	McCoy 5	T10N, R8E, Sec. 3,4,9,10,15,21,22, & T11N, R8E, S33, WM.	4.8	1.0	Regen.
1992	Holdaway 2.	T9N, R8E, Sec. 4, 5,8,9,16,17, WM.	4.8	0.3	Regen.
1992	Langille 4	T10N, R8E, Sec. 7,8,17,18,19,20, WM.	3.5	0.9	Regen.
1993	Kidd South	T10N, R8E, Sec. 3, 10, WM.	1.9	3.0	ComThin/ Regen.
1993	McCoy 6/ A.	T10N, R8E, Sec. 4,5,8,9, WM.	3.1	1.30	ComThin/ Regen.
1993	Marmot	T9N, R7E, Sec. 1, 12; T9N, R8E, Sec. 6,7; T10N, R7E, Sec. 24, 25, 36; & T10N, R8E, Sec. 19,30,31, WM.	8.6	3.0	Regen.

Abbreviations used above:

T-Township; N-North; R-Range; E-East· WMS-Willamette Meridian; MMBF-Million Board Feet; Regen-Regeneration harvest i.e., clearcut with reserve trees, shelterwood, or seed tree; ComThin-Commercial Thinning

RECREATION PROJECTS

Fiscal year	Trails: Trail name	Miles of construction/ reconstruction	Fiscal year	Other: Project name
1993	High Bridge	2.0	1994	McCoy Horse Camp.
1994	Juniper	11.6		
1994	Langille	10.4		

The McCoy EIS will tier to the Forest Plan, which provides the goals and objectives, forest-wide standards and guidelines, management area categories and prescriptions that will be used to implement all the proposed projects on the forest.

The McCoy Planning Area is about 29,782 acres in size. It contains about 11,482 acres outside of the Dark Divide Roadless Area and 16,800 undeveloped acres and 1,500 developed acres within the 55,000 acre Dark Divide Roadless Area. Dark Divide was considered but not selected for Wilderness Designation in the Washington Wilderness Act of 1984. The area is on both the Randle and Mt. St. Helens Districts but only projects on the Randle District will be considered. The Forest Plan allocates the McCoy Area into seven management area categories. They are: (1) Unroaded recreation/motorized—41% (no timber harvest); Unroaded recreation/non-motorized—7% (no timber harvest); (3) Roaded Recreation—2% (no timber harvest); (4) Timber Production—41% (full timber harvest); (5) Deer and Elk Winter Range—3% (limited timber harvest); (6) Pileated Woopecker—1% (no timber harvest); and (7) Wild and Scenic River—5% (limited timber harvest).

Issues that are currently identified to be addressed in the Environmental Impact Statement include the potential effects of management and activities on: The roadless area; visual quality both in and out of recreation areas; water quality and fisheries; Threatened, Endangered and Sensitive Species (including Northern Spotted Owl); Cultural Resources; and fragmentation of interior wildlife habitat in old-growth and second growth stands of trees.

A range of alternatives for the project area will be considered. One alternative will be no action and another will maximize timber harvest according to the Forest Plan Standards and Guidelines specified for the land allocations that permit timber harvest. Other alternatives will consider various timber sale, road development, and other resource management proposals that address the key issues. All action alternatives will be developed through an integrated resource analysis process and will consider recreation, wildlife, watershed, fisheries, and cultural resource projects.

Scoping (identifying and defining issues) and public involvement will continue throughout the process to identify any new issues, the depth of analysis needed for each issue, and to determine objectives for the alternatives. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, or individuals who may be interested in or affected by the proposed project. This information will be used in the preparation of the Draft Environmental Impact Statement.

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and to be available for public review in October 1991. At that time, copies of the Draft Environmental Impact Statement will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The Environmental Protection Agency will publish notice of availability of the Draft Environmental Impact Statement in the **Federal Register**. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The Final Environmental Impact Statement is scheduled for completion in March 1992. In the Final Environmental Impact Statement, the Forest Service is required to respond to substantive comments received during the comment period for the draft Environmental Impact Statement. Ted C. Stubblefield (Gifford Pinchot National Forest, 6926 E. Fourth Plain Boulevard, P.O. Box 8944, Vancouver, WA 98668–8944), is the Responsible Official. He will decide which, if any, of the proposed project alternatives will be implemented. His decision and reasons for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: May 1, 1991.

Nancy Graybeal,

Deputy Forest Supervisor.

[FR Doc. 91-10924 Filed 5-7-91; 8:45 am]

BILLING CODE 3410-11-M

Management Direction on Northern Spotted Owls; National Forests in Oregon, Washington, and Northern California

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement for amendments to the Regional Guide for the Pacific Northwest Region and the Regional Guide for the Pacific Southwest Region in accordance with the requirements of 36 CFR 219.19.

DATES: Comments concerning the scope of the analysis should be received in writing by June 7, 1991.

ADDRESSES: Send written comments to Jerald N. Hutchins, Leader, Spotted Owl Team, c/o John F. Butruille, Regional Forester, 319 SW. Pine Street, P.O. Box 3623, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Jerald N. Hutchins, Leader, Spotted Owl Team, (503) 326-3625.

SUPPLEMENTARY INFORMATION: The Environmental Impact Statement (EIS) will establish standards and guidelines for maintaining viable populations of northern spotted owls in accordance with requirements of 36 CFR 219.19.

Northern spotted owls are known to be present on 13 National Forests in the States of Oregon and Washington, Pacific Northwest Region (the Mt. Baker-Snoqualmie, Gifford Pinchot, Siuslow, Umpqua, Siskiyou, Okanogan, Wentchee, Willamette, Winema, Olympic, Mt. Hood, Deschutes, and Rogue River) and 4 National Forests in northern California, Pacific Southwest Region (the Six Rivers, Mendocino, Klamath, and Shasta-Trinity). The counties encompassed by these National Forests are Benton, Clackamas, Coos, Curry, Deschutes, Douglas, Hood River, Jackson, Jefferson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, and Wasco Counties in Oregon; and Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, King, Kittitas, Klickitat, Lewis, Mason, Okanogan, Pierce, Skagit, Skamania, Snohomish, Whatcom, and Yakima Counties in Washington; and Colusa, Del Norte, Glenn, Humboldt, Lake, Mendocino, Shasta, Siskiyou, Tehama, Trinity Counties in California.

In June 1990, the Fish and Wildlife Service listed the northern spotted owl as a threatened species throughout its range. By notice in the **Federal Register** (55 FR 40412, October 3, 1990), the Secretary of Agriculture vacated the standards and guidelines in the Pacific Southwest and Pacific Northwest Regional Guides that pertained to the northern spotted owl and directed that, pending further direction from Congress or the Fish and Wildlife Service, timber management activities affecting the owl would comply with the Endangered Species Act and would be not inconsistent with the conservation strategy developed by the Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl. On March 7, 1991, Judge Dwyer (Federal District Court, Western Washington) ruled in *Seattle Audubon Society, et al.*, v. *Evans, et al.* that the Forest Service had violated the National Forest Management Act (NFMA) regulations (36 CFR part 219) by failing to follow the process required by the regulations for adopting management direction to assure the viability of the northern spotted owl.

This notice of intent initiates the process of amending the Regional Guides in accordance with 36 CFR part 219. The standards and guidelines established by these amendments will be reviewed when the Fish and Wildlife Service issues the Northern Spotted Owl Recovery Plan, and, if necessary, changed after that review through further amendments to the Regional Guides. Thus, this direction on management of northern spotted owl habitat is likely to be applicable only during the interim between its adoption and any further amendments to the Regional Guides necessitated by the Recovery Plan, tentatively scheduled to be completed in June 1992.

As the issues related to conservation of the northern spotted owl have been well established through extensive scientific study and public debate, the Forest Service proposes to use this record in scoping the draft EIS. Written comments from the public should be submitted as indicated at the beginning of this notice and would be most useful if sent by the date specified.

Alternatives which may be considered include a no-action alternative, an alternative that follows the recommendations of the Interagency Scientific Committee, and an alternative that incorporates any critical habitat proposals by the Fish and Wildlife Service.

The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. If public meetings are used as one of the methods for public involvement on the draft EIS, they will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of the scheduled dates. If public hearings are scheduled, they will be announced in the notice of availability.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that these interested in this proposed action participate by the close of the 90 day comment period on the draft EIS so that substantive comment and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The responsible official for this EIS and decision is F. Dale Robertson, Chief, USDA, Forest Service, P.O. Box 96090, Washington, DC 20090-6090.

A draft Environmental Impact Statement is expected to be available for agency and public review by January 1992, and a Final Environmental Impact

Statement should be available by July 1992.

Dated: May 2, 1991.

Jeff M. Sirmon,

Deputy Chief, FS.

[FR Doc. 91-10847 Filed 5-7-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 22, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand for the period December 1, 1987 through November 30, 1988. The review covers one manufacturer/exporter, McKechnie Pacific Limited. As a result of our review, we determine the weighted average dumping margin to be 0.66 percent *ad valorem* for the review period.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 12169) the preliminary results of its administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 49740; December 4, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are low-fuming brazing copper rod and wire from New Zealand, principally of copper and zinc alloy ("brass") of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. During the review period, such merchandise was classifiable under item numbers 612.6205, 612.7220 and 653.1500 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 7406.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60 and 8311.90.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, McKechnie Pacific Limited (McKechnie), and the period December 1, 1987 through November 30, 1988.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the review period:

Manufacturer/exporter	Review period	Margin (percent)
McKechnie	12/01/87-11/30/88	0.66

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Pursuant to 19 CFR 353.6 the Department will disregard any *de minimis* weighted-average dumping margin (*e.g.*, less than 0.50 percent *ad valorem*) for purposes of the cash deposit of estimated antidumping duties. Because the Department has determined in a more recent review period (December 1, 1988 through November 30, 1989) that McKechnie's margin was 0.33 percent *ad valorem*, and therefore *de minimis*, no cash deposit shall be required for McKechnie or for a new exporter whose first shipment occurred after November 30, 1989. These deposit requirements shall be effective for all shipments of low-fuming brazing copper rod and wire from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10922 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of

Commerce, Room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86–A0008."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 86–00008, issued on December 17, 1986 (51 FR 45928 December 23, 1986).

Summary of the Application

Applicant: Streamline Shippers Association, Inc. (SSA) 5525 So. Santa Fe Avenue, Vernon, California 90058.

Contact: Ronald N. Cobert, SSA Counsel, 1730 M Street, NW, Suite 400, Washington, DC 20036, Telephone: (202) 296–2900.

Application No.: 86–A0008.

Date Deemed Submitted: April 22, 1991.

SSA seeks to amend its Certificate by clarifying the "forwarder services" it will offer and revising its classes of members. These revisions require the following changes:

(1) Revise part (c) of Export Trade to read as follows:

Transportation Services (As They Relate to the Export of Products) include: Overseas freight transportation; inland freight transportation to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; forwarder services (including, but not limited to, preparing and/or processing export declarations; preparing or processing delivery orders or dock receipts; preparing, processing, or issuing bills of lading; preparing or processing consular documents, or arranging for their certification; and preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or other consignees, as required); insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; overseas distribution; paying or charging commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; consulting; customs services; feasibility studies; investment services; legal services; management services; and translation services.

(2) Revise part 7(c) of the Export Trade Activities and Methods of Operation as follows:

(c) SSA shall have four classes of SSA Members: (1) Regular members, (2) NVOCC members, (3) transportation members; and (4) shippers' association members, and may prescribe the eligibility requirements for each class of member;

(3) Add the following definitions to clarify certain terms in revised part 7(c):

(1) "Regular members" include manufacturers, beneficial interest shippers, and similar entities.

(2) "NVOCC members" include any non-vessel operating common carrier under the Shipping Act of 1984, and which shall maintain a tariff on file with the Federal Maritime Commission and post a surety bond as required by regulations of the Federal Maritime Commission.

(3) "Transportation members" include any firm, or affiliate thereof, engaged primarily in the transportation business as an intermediary, direct carrier, or service organization.

(4) "Shippers' association members" include any shippers association, provided that for purposes of foreign commerce only, such shippers' association must maintain a list containing the names of its members and compliance data if any such member shall be a non-vessel operating common carrier as defined in the Shipping Act of 1984.

Dated: May 2, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–10834 Filed 5–7–91; 8:45 am]

BILLING CODE 3510–DR–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Order of Extraordinary Challenge Committee

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of order of the Extraordinary Challenge Committee established to review the January 22, 1991 binational panel decision in the panel review of the affirmative determination of threat of material injury made on remand by the U.S. International Trade Commission on October 23, 1990, respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No. ECC–91–1094–01USA.

SUMMARY: On April 22, 1991, the Extraordinary Challenge Committee ordered that Oral Argument be heard on May 15, 1991, that each participant be permitted to file a Reply Brief of no more than 25 pages on or before May 2, 1991 and that the deadline for the Committee to file its decision be extended to June 14, 1991. Copies of the order of the Committee are available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904.13 of the Agreement, where a Party alleges that a binational panel has seriously departed from a fundamental rule of procedure, has manifestly exceeded its powers, authority or jurisdiction or that a member of the panel has materially violated the Code of Conduct established pursuant to article 1910, and further alleges that any of these actions have materially affected the panel's decision and threaten the integrity of the binational panel review process, that party may request that an Extraordinary Challenge Committee be established under the procedure set out in Annex 1904.13 of the Agreement.

Under Annex 1904.13 of the Agreement, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Extraordinary Challenge Committees ("ECC Rules"). These ECC rules were published in the **Federal Register** on December 30, 1988 (53 FR 53222). The ECC Rules give effect to the provisions of chapter nineteen of the Agreement with respect to Extraordinary Challenge Committee proceedings conducted pursuant to article 1904 of the Agreement. The ECC rules are intended to result in decisions typically within 30 days after the establishment of the Extraordinary Challenge Committee. The Extraordinary Challenge Committee proceeding in this matter will be conducted in accordance with these ECC rules.

Dated: May 2, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-10865 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of Final Results of Antidumping Duty Administrative Review and Cancellation of Suspension Agreement made by the Department of Commerce, International Trade Administration, Import Administration, respecting Sheet Piling from Canada, Secretariat File No. USA-90-1904-03.

SUMMARY: Pursuant to rules 73(2) and 80(1)(a) of the Article 1904 Panel Rules ("Rules"), the Panel Review of the final determination described above was completed on April 22, 1991, the date following the filing of a consent motion to terminate the binational panel review of this matter. The panelists were discharged from their duties effective April 22, 1991.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: On December 19, 1990, Casteel, Inc., filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review, but not the Cancellation of Suspension Agreement, respecting Sheet Piling from Canada made by the International Trade Administration, Import Administration, Import Administration File Number A-122-007. Notice of this determination was published in the **Federal Register** on November 21, 1990 (55 FR 49551). The Binational Secretariat assigned case no. USA-90-1904-03 to this request.

On April 19, 1991, Casteel, Inc. filed a Notice of Consent Motion Requesting Termination of Panel Review with an accompanying affidavit indicating the consent of all participants to the motion. The Notice of Consent Motion indicated that the motion was filed because Casteel, Inc. plans to cease production of sheet piling in Canada and relocate production to the United States by June 1991.

Rule 73(2) provides that "where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed * * * the panel review is terminated and, if a panel has been appointed, the panelists are discharged." Rule 80(1)(a) provides that the termination shall be effective on the day after the day on which the affidavit is filed. Pursuant to the authorities cited above, this Notice of Completion of Panel Review was effective and the panelists were discharged from their duties on April 22, 1991.

Dated: May 2, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-10866 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

Announcing a Meeting of Fastener Quality Act Advisory Committee

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of Advisory Committee Meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on May 29, and 30, 1991. The meeting will be for the purpose of providing advice to the Department of Commerce, pursuant to statute, on the implementation of the Fastener Quality Act of 1990 (Pub. L. 101-592). The meeting is open to the public.

DATES: The meeting will be held on May 29, 1991 from 1 p.m. to 5 p.m., and on May 30, 1991 from 9 a.m. to 4 p.m., or earlier if so adjourned.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building (101), Lecture Room B, Route 117 at Bureau Drive, Gaithersburg, Maryland 20899.

AGENDA: The Advisory Committee will receive reports from Commerce staff and will determine issues that need to be considered by the Committee to assist the Department of Commerce in implementing the provisions of the Fastener Quality Act.

PUBLIC PARTICIPATION: The meeting is open to the public. All interested persons wishing to attend the meeting should notify the contact person listed in this notice by May 22.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Deputy Director, Technology Services, National Institute of Standards and Technology, Building 221, Room A363, Gaithersburg, MD 20899, Telephone (301) 975-4500.

Dated: May 3, 1991.

John W. Lyons,

Director.

[FR Doc. 91-10923 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

American Lobster Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a public hearing, in conjunction with a meeting, to receive comments on Amendment 4 to the American Lobster Fishery Management Plan (FMP). The amendment proposes to suspend the scheduled increases beyond 3¼ inches in the minimum size for American lobster in Federal waters.

DATES: The hearing will be held on Thursday, May 16, 1991, at 11:30 a.m. Written comments should be submitted on or before May 31, 1991, to the address below.

ADDRESSES: The hearing will be held at the Quality Inn, 291 Jones Road, Falmouth, MA. Written comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Clearly mark the outside of the envelope "Lobster Management Comments."

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, 617-231-0422.

SUPPLEMENTARY INFORMATION: The proposed action would roll back the 3$^{9}/_{32}$ inch minimum lobster size that became effective on January 1, 1991, to 3¼ inches. If the measure is approved, the minimum size will remain at 3¼ inches with the timing of future increases left open-ended.

The measure was proposed primarily because the major lobster-producing states have a 3¼ inch minimum size now in effect. Massachusetts legislation delays further increases beyond 3¼

inches until January 1, 1992, and until Maine, New Hampshire, Rhode Island, and Connecticut also increase their minimum gauge sizes above 3¼ inches. Maine has passed similar legislation while New Hampshire has no legislation in place to increase its minimum size of lobster beyond 3¼ inches. Rhode Island regulations currently do not contain any increase beyond 3¼ inches.

Because the states produce more than three-fourths of the annual U.S. lobster harvest, Federal regulations that are in conflict with the states would serve no useful purpose. Lobster fishermen who operate in the exclusive economic zone, who hold Federal permits or have Federal endorsement of state permits would be subject to the 3$^{3}/_{32}$ minimum size limit under the current regulations. Enforcement by federal agents would be difficult and there would be little or no incentive for state agencies to enforce the Federal size.

Dated: May 3, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10911 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Czech and Slovak Federal Republic

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for special carryforward. As a result, the limit for Category 443, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 18369, published on May 16, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 10, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1990 and extends through May 31, 1991.

Effective on May 8, 1991, you are directed to amend the May 10, 1990 directive to increase the limit for Category 443 to 107,289 numbers [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-10745; Filed 5-7-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a letter to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 20293, published on May 16, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 10, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on June 1, 1990 and extends through May 31, 1991.

Effective on May 8, 1991, you are directed to amend further the directive dated May 10, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

[1] The limit has not been adjusted to account for any imports exported after May 31, 1990.

Category	Adjusted twelve-month limit [1]
347/348/647/648.	1,257,308 dozen of which not more than 896,632 dozen shall be in Categories 347/348 and not more than 674,160 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-10744; Filed 5-7-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Military Personnel Property Symposium; Meeting

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice of open meeting.

Announcement is made of a meeting of the Military Personnel Property Symposium. This meeting will be held on 29 May 1991 at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

PROPOSED AGENDA: The purpose of the sumposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the DOD 4500.34-R, Personal Property Traffic Management Regulation, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

FOR FURTHER INFORMATION CONTACT: All interested parties desiring to submit topics to be discussed should contact Mr. Moreno, Military Traffic Management Command, ATTN: MTPP-M, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1600. Topics to be discussed should be received as soon as possible.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10889 Filed 5-7-91; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Open Systems Architecture for Command, Control and Communications (C^3) will meet on May 23 and 24, 1991. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on May 23 and 24, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their assessment of the current Navy C^3 systems architecture to support anticipated requirements, evaluate the performance of the present system relative to the existing threat, and provide recommendations for an overall architecture and architectural approach to meet future needs, as well as provide recommendations concerning use of current and future commercial data communication systems for both interim and continuing satisfaction of Department of the Navy needs. The agenda will include briefings and discussions related to current C^3 requirements, Desert Shield/Storm Lessons Learned, Copernicus Architecture, the Communications Support System, the World-wide Military C^2 System, the Defense Satellite Communications System, and Navy Tactical, Ashore Automation/Consolidation, Space and Surveillance, and Strategic C^3 Programs. These briefings and discussions will necessarily address current C^3 capabilities and limitations, as well as susceptibility to penetration or denial. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: May 3, 1991.

G.B. Roberts,

Federal Register Liaison Officer.

[FR Doc. 91-10916 Filed 5-7-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meetings

AGENCY: Intergovernmental Advisory Council on Education, Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIMES: May 31, 1991, 9 a.m. to 4 p.m.

ADDRESSES: George Washington High School, Community School, 655 South Monaco Parkway, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Executive Director, Intergovernmental Advisory Council on Education, room 3036, 400 Maryland Avenue SW., Washington, DC 20202-7576, (202) 401-3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

On May 31, the Intergovernmental Advisory Council on Education will meet from 9 a.m. to approximately 4 p.m. The meeting is open to the public.

The proposed agenda of the meeting includes discussion of (1) ways to improve the flow and coordination of information between Congress and state legislative bodies with respect to education legislation and (2) budget review and administrative issues that

are related to the termination of the Council.

On May 31, the Executive Committee will meet from 6:30 p.m. to approximately 8:30 p.m. and on June 1 from 9 a.m. to 12 p.m. at the Registry Hotel, Executive Board Room, 3203 Quebec Street, Denver, CO. The meeting is open to the public. The proposed agenda of the meeting includes a review of the final recommendations to the President and the Secretary and other matters pertaining to the Executive Committee's responsibilities.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue SW., room 3038, Washington, DC 20202-7576, from the hours of 9 a.m. to 5 p.m.

Dated: May 2, 1991.

William L. Smith,

Acting Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 91-10919 Filed 5-7-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Issue a Restricted Eligibility Solicitation for the Conduct of Feasibility Studies for the Siting of a Monitored Retrievable Storage Facility

AGENCY: U.S. Department of Energy.

ACTION: Notice of Intent ("Notice") to make grants of financial assistance on a restricted eligibility basis pursuant to 10 CFR 600.7(b)(1) in response to applications received from eligible States, Indian tribes and affected units of local government pursuant to section 406(b) of the Nuclear Waste Policy Act of 1982, as amended.

SUMMARY: Section 142(b) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*) ("Act"), authorizes the Secretary of Energy to site, construct and operate one monitored retrievable storage (MRS) facility subject to the conditions described in sections 143 through 149 of the Act. Section 145(a) contemplates that the MRS constructed upon such site as may ultimately be selected shall represent an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under the Act. The Office of Civilian Radioactive Waste Management's (OCRWM) current program objectives include the siting and construction of an MRS in accordance with the Act and in such a manner as to enable it to begin limited waste acceptance at the MRS facility as early as 1998.

Section 406(b) of the Act authorizes the Secretary of Energy to make grants of financial assistance to any State, Indian tribe or affected unit of local government to assess the feasibility of siting an MRS at a site under the jurisdiction of such State, Indian tribe or affected local unit of government. By means of this Notice, OCRWM gives notice of its intent to issue a restricted eligibility solicitation inviting the submission by eligible States, Indian tribes and affected units of local government of applications for grants of financial assistance for studies in order to assess the feasibility of siting an MRS at a site under the jurisdiction of such State, Indian tribe or affected unit of local government. Executive Order 12372 applies.

The terms "State", "Indian tribe" and "Affected unit of local government are defined at sections 401, 2(15) and 2(31) of the Act, respectively. Thus, the structure and language of the Act itself warrants the use of a restricted eligibility procedure for the grant of financial assistance in this instance.

On or about May 23, 1991 DOE will issue a solicitation for applications from States, Indian tribes and affected units of local government for grants of financial assistance for the purpose of studying the feasibility of locating an MRS at a site under the jurisdiction of such a defined entity. The solicitation will provide for two types of feasibility study grant applications: Preliminary (Phase 1) and advanced (Phase 2). Preliminary study grants will be for a maximum of $100,000 and be based upon conformance with eligibility requirements set forth in the solicitation document. There is no predetermined limit on the amount of an advanced study grant but such grants as may be awarded will be based upon and determined by eligibility requirements prescribed in the solicitation. Applications will be accepted through December 31, 1991; will be processed and acted upon in the order received, if complete; and will be subject to the availability of funds for such purpose at the time of a decision thereon. DOE currently has available the sum of $1.097 million for the purpose of such grants.

Requests for copies of the solicitation must be in writing to: U.S. Department of Energy, Office of Placement and Administration, Attn: Ms. Kristin Wright/PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

The point of contact, Ms. Wright can be reached on (202) 586-4285.

Scott Sheffield,

Acting Director, Operations Division "B" Office of Placement and Administration.

[FR Doc. 91-10907 Filed 5-7-91; 8:45 am]

BILLING CODE 6450-01-M

NOXSO Corp.; Exclusive Patent Licenses

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to NOXSO Corporation, of Library, Pennsylvania, an exclusive license to practice the invention described in U.S. Patent No. 4,878,442, entitled "NO_x Control for High Nitric Oxide Concentration Flows Through Combustion Driven Reduction." The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than July 8, 1991.

ADDRESSES: Office of Assistant General Counsel for Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, Forrestal Building, room 6F-067, 1000 Independence Avenue,

Washington, DC 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

NOXSO Corporation, of Library, Pennsylvania, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,878,442, and has a plan for commercialization of the invention.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on May 2, 1991.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 91–10908 Filed 5–7–91; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Occidental Petroleum Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of withdrawal of proposed consent order.

SUMMARY: On January 31, 1989, the Economic Regulatory Administration (ERA) executed a proposed Consent Order with Occidental Petroleum Corporation (Occidental), including its wholly-owned subsidiary, OXY USA Inc. (formerly Cities Service Oil and Gas Corp., successor in interest to Cities Service Company). The proposed agreement was entered into to resolve matters relating to Occidental's compliance with the federal petroleum price and allocation regulations during the period October 1979 through January 1981, and contemplated the payment by Occidental to DOE of $205,080,000, including interest, over an eight-year period. The proposed Consent Order was published for comment in 54 FR 22469 (May 24, 1989) and 54 FR 35371 (August 25, 1989), and a public hearing was conducted on the proposed agreement on September 27, 1989.

After consideration of all the written comments received in response to both notices and the oral presentations made at the public hearing, ERA determined to attempt to renegotiate the proposed agreement. This effort was unsuccessful. Accordingly, by this notice, ERA announces its withdrawal of the proposed Consent Order.

FOR FURTHER INFORMATON CONTACT: Dorothy Hamid, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1699.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 24, 1989, ERA gave Notice in the **Federal Register** of a proposed Consent Order between the Department of Energy (DOE) and Occidental which required Occidental to pay $205,080,000, including interest over eight years, to resolve matters relating to Occidental's compliance with DOE regulations during the period October 1979 through January 1981, including the matters adjudicated by the DOE's Office of Hearings and Appeals (OHA) in a September 30, 1988, Remedial Order issued to Occidental's wholly-owned subsidiary. *Cities Service Oil and Gas Corp.*, 17 DOE ¶ 83,021 (1988). Under the terms of the proposed Consent Order, persons claiming to have been harmed by the overcharge claims resolved by the proposed Consent Order would be able to present applications for refunds in an administrative claims proceeding before OHA. 10 CFR part 205, supart V.

The May 24 Notice solicited written comments to enable ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified, or rejected. To ensure public understanding of the bases for the proposed settlement, the May 24 notice provided detailed information regarding the matters resolved by the proposed Consent Order and the considerations which formed the bases of the ERA's preliminary agreement to the proposed settlement terms. As of August 11, 1989, ERA had received eighteen submissions concerning the proposed Consent Order.

After review of those submissions, ERA on August 25, 1989, published a second **Federal Register** notice which responded to (1) various commenters' objections to the process utilized by ERA in reaching the proposed settlement with Occidental, (2) the proposal of energy Refunds, Inc. that The Permian Corporation should be made a party to the proposed Consent Order, (3) concerns about the proposed Consent Order's eight-year payout term expressed by Congressman John D. Dingell, Chairman of the House Energy and Commerce Committee, and by a group of five utilities, eighteen transporters, and four manufacturers (hereafter UTM), and (4) various commenters' reliance on selected portions of the OHA's Cities Remedial Order decision and ERA's litigation pleadings in that case to urge rejection or renegotiaton of the proposed settlement. 54 FR 35371.

In addition to the foregoing, the ERA in the August 25 notice invited additional written comments addressed to certain issues raised in some of the comments received in response to the May 24 notice. Specifically, ERA solicited further comment addressed to the following matters:

(1) Whether the eight-year payment period should be renegotiated;

(2) Whether, in a settlement context, it is appropriate to exclude consideration of all factors other than litigation risk, in reaching an appropriate level of compromise with Occidental;

(3) What additional significance, if any, should be attached to the undisclosed contents of documents subject to privilege claims or under seal in private litigation between Gulf Oil Corporation (now merged with Chevron U.S.A., Inc.) and Cities in federal and state courts.[1]

ERA also urged that all persons with specific information concerning the allegation made by Mr. Dingell and Chevron, that Cities had withheld relevant non-privileged documents from DOE, to provide the particulars regarding this matter to ERA during the 30-day additional comment period announced in the August 25 notice.

Lastly, ERA announced in the August 25 notice a public hearing to provide interested persons an opportunity to

[1] *Cities Service Co.* v. *Gulf Oil Corp.*, No. C–82–1998 (Dist. Ct. Okla.); *In re Gulf Oil/Cities Service Tender Offer Litigation*, No. 82 Civ. 5253 (S.D.N.Y.); *W. Alton Jones Foundation* v. *Chevron U.S.A., Inc.*, No. 87 Civ. 8982 (S.D.N.Y.).

make oral presentations on the matters solicited for comment in the Notice.

Six written comments were received in response to the August 25 notice, and representatives of five of the respective commenters made oral presentations at a public hearing held on September 27, 1989. At the conclusion of the hearing, ERA held the hearing record open for an additional two weeks, to permit additional written submissions designed to resolve the allegation that Cities had withheld from DOE a document from the files of Arthur Young & Company, Cities' accountants in 1980 and 1981. ERA received seven post-hearing written submissions. Three submissions were made by Chevron; the remaining four post-hearing comments were from Mr. Dingell, Occidental, the Attorney General of Texas, and a group of fourteen States.

On September 26, 1990, the stay of the *Cities* litigation, entered to permit completion of notice and comment procedures on the proposed Consent Order, was dissolved at the parties' joint request. Thereupon, litigation was resumed before the Federal Energy Regulatory Commission (FERC) on OXY USA Inc.'s appeal from the *Cities* Remedial Order. On November 30, 1990, ERA issued a subpoena to OXY in furtherance of the Remedial Order's remand directive.

II. Comments Received in Response to August 25, 1989, Notice and at September 27, 1989, Public Hearing

In the 30-day period following the August 25 notice, written comments were received from (1) Texas, New Mexico, New Jersey, Pennsylvania and Minnesota (hereafter States I); (2) Alabama, California, Connecticut, Idaho, Indiana, Maryland, Michigan, Mississippi, Montana, Ohio, South Dakota, Vermont, Wisconsin, and Wyoming (hereafter States II); (3) Hawaii, Illinois, Kansas, Nebraska, Nevada, North Carolina, Guam, the Virgin Islands, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia (hereafter States III); (4) the UTM; (5) Chevron; and (6) Occidental. All of the commenters reiterated positions they has asserted in comments filed in response to the May 24 Notice. With respect to the three specific matters as to which the August 25 notice requested additional comment, the commenters stated as follows:

A. The Eight-Year Payout Term

Of the commenters which addressed the proposed Consent Order's payout term, all except Occidental opposed the eight-year payment period as excessive.

States I asserted that Occidental's payment of the proposed settlement amount over eight years would impose unacceptable burdens on State governments charged with the responsibility of ensuring prompt and efficient restitutionary distribution to their citizens. Second, States I opposed the eight-year payout term on the grounds that when a company such as Cities violates a federal regulatory program "so egregiously," "retribution should be swift and painful," and "should always incorporate a degree of punishment." States I Comments at 7. In accordance with this view, these commenters deemed an appropriate payout period to be no longer than the time frame in which the alleged overcharges occurred, namely, thirteen months. Third, States I concluded from a review of Occidental's annual reports and Form 10–K filings that Occidental is financially able " to absorb its full restitutionary obligation in settlement" and to make the required payments in far less time than eight years. *Id.* at 7–8.

The UTM asserted the view, based on the statement in the August 25 Notice that Occidental has stockholders' equity of $6.2 billion, that the payment contemplated by the proposed Consent Order should be "immediate." UTM Comments at 1–2. States III suggested that the payment period should be renegotiated, and that any revised payment period should not exceed six years, like the payment period under the 1988 consent order with Texaco Inc.

In opposition to any alteration of the proposed payout term, Occidental stated that the eight-year payment period was a "critical provision," and that it was willing to enter into the settlement only if it could satisfy the proposed settlement's payment obligations from the estimated future earnings of OXY USA Inc., its operating subsidiary involved in the "tier trade" enforcement case. Occidental Comments at 2–4. Occidental emphasized that the eight-year payout provision was not based upon a finding of financial hardship. Rather, Occidental insisted on the eight-year term because it was assertedly the only way to ensure that the company would be able to pay any cash settlement without having to increase its borrowing. *Id.* at 4–5.

B. Consideration of Factors Other Than Litigation Risks

All of the commenters addressed their respective perceptions of the correctness of OHA's Cities Remedial Order decision, and all except Occidental viewed DOE's litigation risk at FERC and in the federal courts as minimal or non-existent.

States II reiterated their previously expressed view that the facts presented in the OHA proceeding, OHA's detailed analysis of those facts and the law applicable to them, OHA's ruling that Cities is liable under any one of several separate theories, the relevant FERC and court precedents, the limited scope of FERC review, and DOE's excellent record in defending OHA decisions in the district courts and the Temporary Emergency Court of Appeals, all militate in favor of the conclusion that there is a high probability that the Remedial Order will be sustained. States II Comments at 8. States II suggested that a 10% settlement discount would be appropriate. *Id.* at 9.

States I deemed it appropriate to consider any "legitimate" litigation risks in evaluating settlement of this case, as long as all relevant factors are considered, including, specifically, Cities' potential liability for Entitlements Program violations in addition to "other" regulatory violations.[2] The UTM expressed the view that the only proper consideration in offering a discount to settle this matter is the risk of reversal of the OHA Remedial Order either in FERC or the federal courts. For the reasons advanced in their comments in response to the May 24 Notice, the UTM believes that ERA's litigation risks in this case are "far less" than in other cases settled for twice or three times the percentage of the Remedial Order for which the proposed Consent Order proposed to settle. UTM Comments at 2–3. Chevron asserted that no factors other than OHA's Remedial Order decision bear a rational relation to the compromise of this litigation. Chevron based this conclusion on ERA's " 'full[ ] endorse[ment]' " of the Remedial Order decision (*see* August 25 notice, 54 FR 35374), and Chevron's view that the Remedial Order is "unassailable." Chevron Comments at 20.

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[2] This comment appears to assume that the alleged Entitlements Program violation amount would be in addition to the $263.8 million price and price rule circumvention violation amount which OHA adjudicated in the 1988 Remedial Order. States II appear to share this view, based on their assertion that the May 24 notice failed to state Occidental's maximum overcharge liability because ERA omitted quantification of the Entitlements Program violation. States II Comments at 4 n.1.

ERA stated in its litigation pleadings before OHA that it sought to impose liability on Cities for violation of 10 CFR 211.66 (which ERA quantified as $254 million in principal amount) in the alternative, not in addition, to the $263.8 million principal overcharge amount arising from Cities' violation of 10 CFR 212.183(b), 210.62(c) and 205.202. For this reason, the May 24 notice stated Occidental's maximum potential liability as $263.8 million, plus interest. 54 FR 22470.

Occidental took issue with what it characterized as Chevron's and other commenters' erroneous contention that ERA's litigation risk assessment should have given "conclusive" weight to OHA's findings in the Cities Remedial Order. Occidental Comments at 6. Occidental pointed out that OHA is only the initial decisionmaker, and concluded that no commenter had shown that ERA erred in the exercise of its broad discretion in determining the appropriate weight to be accorded an OHA decision when assessing DOE's litigation risk on appeal. *Id.* at 7–10.

C. The "Withheld" and Additional Documents Issues

States I maintained that ERA has an "absolute responsibility" to order Cities to tender all documents which are the subject of privilege claims or under seal in private litigation between Cities and Chevron, because there "seems to be a general feeling" that these documents would have a "pronounced relevance" on the issue of Cities' alleged good faith in the subject "tier trade" transactions, and because of the ruling of a New York federal district court that documents which Cities claimed to be protected from disclosure where releasable under the "crime-fraud" exception to the attorney-client privilege. States I contended that ERA must learn the contents of the crime-fraud exception documents, as well as others under seal by court order, before it "completely exonerates" Occidental through the proposed Consent Order. States I Comments at 12.[3]

States II did not address the documents sealed by court order, but contended that DOE access to the crime-fraud exception documents would significantly reduce DOE's litigation risk, "perhaps to near zero," if DOE could obtain them. States II urged DOE to await the outcome of any appeals of the New York court's ruling on the status of the Cities documents, and if the documents become public, DOE could then decide its appropriate course. States II also maintained that DOE should in any event insist that Cities disclose the documents in question as a condition of DOE's approval of the proposed Consent Order. States II Comments at 12. Finally, States II asserted that if, as Chevron alleged, there are some Cities documents which are not the subject of any claim of privilege and which have somehow escaped DOE's grasp, these should be obtained forthwith. *Id.* at 12, 13.

The UTM maintained that after full litigation of the matter before OHA and the rendering of a decision in ERA's favor, the only appropriate consideration for settlement purposes is the assessment of litigation risk. Consistent with that position, the UTM stated that ERA should not consider any documents beyond those already in the OHA record. If ERA does consider additional submissions, then ERA should have available the documents which "evidently" have been withheld by virtue of Cities' assertion of privilege in private litigation. UTM Comments at 3–4. Regardless of the foregoing, UTM suggested that ERA should investigate the serious allegations "evidently made" by Chairman Dingell and by Chevron that Cities deliberately withheld documents subject to discovery, and sought to be discovered by ERA. *Id.* at 4.

In its comments, Chevron identified three categories of documents. First, there are documents (including deposition testimony) which Cities produced to Chevron in the Cities/Chevron litigation and which are subject to a confidentiality stipulation between the parties entered as a court order. Chevron Comments at 21. Second, Chevron identified documents as to which Cities aserted attorney-client and attorney work product privileges in Cities/Chevron litigation in New York federal district court, namely, the crime-fraud exception documents. *Id.* at 22. Third, Chevron identified documents produced by Cities to Chevron from the files of Arthur Young & Co., Cities' auditors in 1980 and 1981. These documents were subpoenaed by ERA and, according to Cities, produced to ERA. Chevron stated that it "ha[d] reason to believe that full production was not made to ERA." *Id.* at 23. Chevron further stated that Cities produced these documents to Chevron under the confidentiality order, and the only way Chevron could confirm its belief that Cities did not make full production to ERA was to obtain a copy of the set of the Arthur Young documents produced to ERA and compare it with the set of Arthur Young documents Cities producd to Chevron. *Id.* at 23.[4] Based on the contents of one contemporaneous Cities document,[5] Chevron suggested that ERA could not proceed responsibly either to measure its litigation risk or to reach a reasoned decision as to whether it wishes to hold Cities "fully accountable" by continuing prosecution without seeing the other contemporaneous Cities documents. Chevron urged ERA to demand these documents from Cities. Chevron Comments at 28–30.

Occidental made the following points regarding undisclosed documents: (1) DOE received every document that it requested of Cities and third parties, except for privileged documents. In those instances where Cities asserted a privilege, DOE either did not contest the assertion or it did contest and both parties accepted the litigated result; (2) Chevron was misleading DOE in attempting to frame the issue as though Cities was obstructing full disclosure by asserting attorney-client or attorney work product privileges. Cities, like all other litigants, was entitled to assert these privileges, and has abided by all court rulings where its privilges assertions have been rejected; (3) no reason exists for Cities to waive its document privileges as a precondition to DOE's entry into a consent order with Occidental. Occidental Comments at 11–12. Finally, Occidental recounted its efforts to identify an allegedly non-privileged Arthur Young document which Chevron asserted Cities had withheld from ERA. *Id.* at 12–15.

At the September 27, 1989, public hearing held on the proposed Consent Order, representatives of States I, States II, the UTM, Chevron, and Occidental reiterated and expanded upon their respective comments submitted in response to the May 24 and August 25 Notices on the issues of the dollar amount of the proposed settlement, the eight-year payout term, the correctness of OHA's Remedial Order decision and DOE's prospects of prevailing

[3] The cited crime-fraud exception ruling was made by Judge Michael Mukasey on March 13, 1989. Plaintiffs unsuccessfully sought reconsideration of this ruling, which Judge Mukasey affirmed in an oral ruling on October 11, 1989, and endorsed as an order on November 27, 1989. An appeal of that order to the Second Circuit Court of Appeals was dismissed on January 3, 1990, and the appellate court's mandate was issued February 19, 1990. The subject documents were produced to Chevron on or about February 21, 1990.

ERA's November 30, 1990, subpoena to OXY USA Inc. cited above seeks the crime-fraud exception documents as well as several other categories of documents, including all documents relating to Cities' tier trades produced to Chevron in those parties' private litigation.

Excerpts of two of the crime-fraud exception documents are quoted in an April 11, 1991, magistrate's Report and Recommendation issued in the *Jones* litigation cited in footnote 1 *supra*. At a show cause hearing on April 22, 1991, convened on Cities' motion, the magistrate denied Cities' requests to place the Report under seal (or, alternatively, redact allegedly "confidential" material therefrom), and to prohibit DOE's use of the Report or information contained therein.

[4] Chevron on May 10, 1989, made a Freedom of Information Act request for the Arthur Young documents produced to ERA. The ERA produced those documents to Chevron on September 28, 1989.

[5] The document in question is a draft Cities "talking paper" dated April 22, 1980, a week before Cities filed its declaratory judgment action against DOE in Delaware federal district court. ERA had submitted this document as an exhibit in the OHA proceeding on the *Cities* Proposed Remedial Order.

throughout the remaining levels of administrative and judicial appeals, and the significance of ERA obtaining Cities documents at issue in the Cities/Chevron private litigation. Although the August 25 Notice indicated that oral presentations would be heard only on the specific issues as to which the August 25 Notice requested additional comment, the speakers at the hearing were permitted to address all aspects of the proposed settlement.

At the conclusion of the hearing, as panel chairman the undersigned announced that the record of the hearing would be held open for an additional two weeks, to permit Chevron and Occidental to confer and determine whether the allegedly withheld Arthur Young document referred to by Chevron at the hearing had or had not been produced to ERA in response to ERA's 1984 subpoena to Arthur Young.

ERA received seven post-hearing submissions, all of which related principally to the documents issue. In one of its three submissions, Chevron acknowledged that the document to which it had referred at the September 27 hearing, namely, a handrwitten paper from the files of Arthur Young & Co., had previously been produced to ERA. For its part, Occidental pointed out that the subject Arthur Young document was not only in DOE's possession but had been submitted by ERA in the Cities Proposed Remedial Order proceeding before OHA.[6]

In a second post-hearing submission, Chevron provided a copy of the transcript of New York Federal District Court Judge Mukasey's October 11, 1989, ruling that certain documents over which Cities claimed privilege are subject to the crime-fraud exception and should be produced to Chevron. (See footnote 3 supra.) States II, the Attorney General of Texas, and Chevron urged ERA to obtain the crime-fraud exception documents and other documents under seal by court order.

III. Final Determination on Proposed Consent Order

As part of the public review process on the proposed Consent Order, ERA has given extensive consideration to the numerous public comments, all of which (except Occidental's) expressed vigorous opposition to one or more of the settlement terms to which ERA preliminarily agreed. ERA is not persuaded that litigation risks, or any single factor, should comprise the exclusive consideration in determining an appropriate level of compromise. Nevertheless, based upon ERA's additional review of financial information and consideration of all the comments, including the public's widespread perception that the settlement terms are unreasonable, ERA concluded that two significant provisions of the proposed Consent Order—the payout term and the principal amount of the settlement—should be renegotiated. Efforts to renegotiate these provisions were ultimately unsuccessful.

Regarding the issues concerning Cities' documents, in the context of its renegotiation efforts and with the Cities/Chevron litigants' agreement and pursuant to court order, ERA sought and obtained access to the crime-fraud exception documents and related materials. The allegations that Cities improperly withheld non-privileged documents requested by DOE (which devolved into a question concerning one Arthur Young document) proved to be unfounded, as noted above.

DOE reviewed the crime-fraud documents and related materials for purposes of a potential settlement. However, DOE and Occidental were unable to agree on the single most important aspect of the settlement, the principal amount. Although it might have been possible to reach agreement on a significantly shorter payout term, the parties' inability to reach accord on a revised principal settlement amount mooted the secondary issue of payout term.[7]

IV. Conclusion

In consideration of all the foregoing, ERA has determined that the public interest is best served by withdrawing the proposed Consent Order, and it is so withdrawn.

Issued in Washington, DC on May 2, 1991.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 91-10909 Filed 5-7-91; 8:45 am]

BILLING CODE 6450-01-M

[6] States II requested ERA to publish a further **Federal Register** notice reporting the filing of the handwritten Arthur Young document submitted for the hearing record by Chevron, stating ERA's "preliminary" response to Chevron's assertions regarding that document, and inviting comment on the document, the Chevron assertions, and the ERA response. ERA submitted the cited Arthur Young document in the OHA proceeding in October 1985. ERA's position concerning that document is set forth in ERA's pleadings in the *Cities* litigation.

[7] ERA conducted a further review of financial information on the Occidental subsidiary sought to be held liable in the *Cities* litigation. While OXY USA Inc.'s financial posture would have made it difficult for the subsidiary to pay the entire proposed settlement amount immediately without substantial impairment of its business operations, eight years appeared to be unnecessary.

Federal Energy Regulatory Commission

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Revised Instructions for Certificate Record Formats

Issued May 1, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Revised Instructions For Certificate Record Formats.

SUMMARY: The purpose of these revised instructions is to facilitate the automated analysis of the applicant's data. It will also minimize the manual intervention needed to aggregate the data from the various filings within a docket to avoid duplication of data in studies performed on an industry-wide basis. These instructions are revised to assist pipelines in complying with the electronic submission requirement for filing certificate applications, amendments and supplements in accordance with Orders Nos. 493 (53 FR 15,025 (Apr. 27,1988)), 493-A (53 FR 30,027 (Aug. 10, 1988)), and 493-B (53 FR 49,652 (Dec. 9, 1988)).

DATES: These revised instructions are available on May 1, 1991.

FOR FURTHER INFORMATION CONTACT: George D. Dornbusch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, room 6106B, 825 North Capitol Street, Washington, DC 20426, (202) 208-1181.

SUPPLEMENTARY INFORMATION: The General Instructions for Natural Gas Pipeline Company Certificate Filings that were issued April 16, 1990, (55 FR 15,269, April 23, 1990) are being revised to include the following new instruction:

26. Amendments and Supplements to Original Docket Number.

a. When an amendment or supplement is filed under the original docket number, a complete refiling of structured data in FILE1 is required. This new FILE1 will combine all of the correct data and records from all previous filings made in the docket with any new or modified data pertinent to the instant amendment or supplement.

By way of example: If CP91-XXXX-000 is filed on April 1, 1991 and a response to a staff data request is filed in CP91-XXXX-000 on April 15, 1991, then FILE1 of the data response must contain all correct data from the previous original FILE 1 that are still valid in addition to the new data, if any, embodied in the data response. The

same procedure holds true if an amendment is filed.

b. Any new or modified records or data elements in FILE1 must be annotated using the FOOTNOTE ID in FILE1 and FILE 2, the footnote file, and indicate that these particular records are being modified or added in the instant filing. FILE3 will continue to be filed as in the past, that is, it will contain only new information related to the particular amendment or supplement being filed.

c. If the supplemental response or the amendment being filed does not contain any new or modified data in FILE1, then the only information that must be filed in FILE1 is a CA01 record with the first eight fields filled in. These are Schedule ID, Record ID, Sequence Number, Company ID, Company Name, Date Filed, Filing Type, and Docket Number. All other data elements of the CA01 record must be left blank.

d. If an amendment is not to replace a previous original filing or amendment (*eg.* the original filing or amendment was filed prior to the advent of the requirement that certificate applications be submitted on electronic media (November 1, 1989) or the amendment is an alternative to the previous application or amendment, etc.), it must be so stated in the beginning or introduction of the pleading of the amendment to be filed.

This new instruction is being incorporated into the General Instructions on disc D–1 of the certificates software package currently available through La Dorn Systems Corporation, c/o Federal Energy Regulatory Commission, 941 North Capitol Street, room 3308, Washington, DC 20426. (202) 898–1151.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1387. For access at 9600 baud, dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208–2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (Room 3308) at the Commission's headquarters, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10860 Filed 5–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–1281–011]

Natural Gas Pipeline Company of America; Changes in Tariff

May 1, 1991.

Take notice that on April 26, 1991, Natural Gas Pipeline Company of America (Natural) submitted for filing the below listed tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on their indicated effective dates:

Substitute Ninety-Seventh Revised Sheet No. 5	12/01/90
Substitute Sixty-Second Revised Sheet No. 5A	12/01/90
Substitute Sixty-Third Revised Sheet No. 5A	01/01/91

Natural states the tariff sheets are submitted in compliance with the Commission's Orders issued January 23, 1991, March 19, 1991, and April 5, 1991, at Docket Nos. CP89–1281–000, *et al.* The tariff sheets effective December 1, 1990, reflect: (1) the elimination of the Gas Inventory Demand Charge (GIDC) from Rate Schedules E–1 and AOR–1, and (2) a revised GIDC for Rate Schedules DMQ–1, G–1, WS–1 and WS–2. Substitute Sixty-Third Revised Sheet No. 5A supersedes the sheet setting out the revised GRI surcharge which became effective January 1, 1991, and reflects the charges set out on Substitute Sixty-Second Revised Sheet No. 5A.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on their indicated effective dates.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service lists at Docket Nos. CP89–1281–000 and TA90–1–26–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inpsection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10858 Filed 5–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1910–000]

Southwestern Public Service Company, Complainant Red River Pipeline, Respondent; Complaint

May 1, 1991.

Take notice that on April 24, 1991, Southwestern Public Service Company (SPS), Post Office Box 1261, Amarillo, Texas 79170, filed in Docket No. CP91–1910–000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) a complaint against Red River Pipeline (Red River), for the violation of section 311 of the Natural Gas Policy Act (NGPA) and its implementing regulations, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

SPS states that it is a fully integrated electric utility company serving areas in Texas, New Mexico, Oklahoma and Kansas. SPS further states that it sells approximately 25 percent of its electricity for resale in interstate commerce and thus is subject to Commission jurisdiction. SPS indicates that Red River is an intrastate natural gas pipeline that offers interruptible transportation pursuant to section 311 of the NGPA.

SPS requests that the Commission find Red River's refusal to provide interruptible transportation services for SPS to its Jones Station electric generating plant to be in violation of NGPA section 311 and the non-discriminatory access provisions of its implementing regulations. SPS claims that Red River's denial of transportation is unlawful because:

(1) Red River possesses the transportation capacity necessary to provide service to SPS;

(2) There are no operational restraints preventing transportation;

(3) In denying service, Red River relied on a condition ("no mid-point taps") that was not included in its

Statement of Operating Conditions, filed with the Commission pursuant to 18 CFR 284.123;

(4) Red River's no mid-point tap condition cannot be a reasonable basis for denying service in this case since SPS has agreed to pay for all necessary facilities and mid-point taps are prevalent in the industry;

(5) Red River's condition is discriminatory as Red River has provided 311 transportation service to other shippers even when taps needed to be built; and

(6) Based upon information and belief, the no mid-point tap condition was not the real reason for denial of transportation service; such service was denied in order to protect marketing opportunities for two affiliates of Red River and to prevent those affiliates from being subjected to competition.

SPS requests that the Commission find Red River to be in violation of section 311 of the NGPA and that the Commission remedy the situation by (a) Ordering Red River to provide SPS the requested transportation services and to provide for or allow the construction of a tap and any other necessary facilitities or equipment, and (b) assessing a civil penalty against Red River in accordance with NGPA section 504. SPS states that if the Commission determines that, based on the record, there is insufficient information to evaluate the illegality of Red River's actions, SPS requests that the Commission institute a proceeding whereby further information can be elicited.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 31, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

SPS states that a copy of the complaint has been served on Red River. Red River's answer to the complaint shall also be due on or before May 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10859 Filed 5-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-16-000]

Wintershall Pipeline Corp.; Petition for Rate Approval

May 1, 1991.

Take notice that on April 25, 1991, Wintershall Pipeline Corporation filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 62.26 cents per MMBtu for transportation of natural gas on its Monroe Field system under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Wintershall states that it is an intrastate pipeline in Louisiana within the meaning of section 2(16) of the Natural Gas Policy Act of 1978. Wintershall's previous maximum interruptible transportation rate of 44 cents per MMBtu for section 311(a)(2) service on its Monroe Field system was approved by the Commission January 13, 1989 in Docket Nos. ST88-3342-000 and ST88-4552-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 21, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10857 Filed 5-7-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3955-2]

Performance Evaluation Reports for Fiscal Year 1990, Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Control, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: May 8, 1991.

ADDRESSES: Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 551-7610 (FTS 276-7610).

Dated: April 17, 1991.

William Rice,

Acting Regional Administrator.

[FR Doc. 91-10902 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00302; FRL-3887-5]

Revised Mutagenicity Test Guideline for Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the revised Mutagenicity Test Guideline. The revised Mutagenicity Test Guideline is being added as Addendum 9 to Subdivision F of the Pesticide Assessment Guidelines, which provides guidance for registrants in the conduct of tests to support registration of pesticides under the Federal Insecticide, Fungicide, and

Rodenticide Act (FIFRA). The Agency has made arrangements for these guidelines to be made available through the U.S. Department of Commerce, National Technical Information Service (NTIS).

ADDRESSES: Copies of the revised Mutagenicity Test Guideline may be obtained through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 487–4650. Orders may be placed by telephone to the NTIS Order Desk and charged against a deposit account or American Express, VISA, or MasterCard, or sent by mail with check, money order, or deposit account number. For rush orders, telephone 1–800–336–4700. From Virginia, Canada, or Mexico, call (703) 487–4650. The publication number is PB 91–158394.

FURTHER INFORMATION CONTACT: By mail: Kerry L. Dearfield, Health Effects Division (H7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 824D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–9780.

SUPPLEMENTARY INFORMATION: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticides must be tested for a variety of health effects. Specific data requirements are codified in 40 CFR part 158, and guidelines for the fulfillment of the data requirements and for the conduct of studies are made available through the National Technical Information Service (NTIS).

The revised mutagenicity guideline has been reviewed and approved by the FIFRA Scientific Advisory Panel and made available for public comment.

The revised Mutagenicity Test Guideline will significantly improve EPA's ability to identify and characterize potential adverse effects in regards to a potential mutagenicity hazard. The guideline provides appropriate and specific guidance concerning the Office of Pesticide Programs (OPP) approach to mutagenicity testing for the registration of a pesticide.

The OPP approach towards mutagenicity testing and the assessment of such data are consistent with the Agency's Mutagenicity Risk Assessment Guidelines. Availability of the revised Subdivision F Mutagenicity Test Guideline will enhance the ability of pesticide registrants to plan, estimate costs, and design mutagenicity studies that the Agency will likely require.

Dated: April 25, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91–10800 Filed 5–7–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100087; FRL–3889–1]

Science Applications International Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corp. (SAIC) has been awarded a contract to perform work for the EPA Office of Water Enforcement and Permits, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable SAIC to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: SAIC will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–C0–0066, SAIC will provide technical support to EPA's Office of Water Enforcement and Permits, EPA Headquarters and EPA Regional Offices for program implementation and enforcement. SAIC will assist in the development of a program whereby technical, engineering, financial, information management, administrative, statistical, training, analysis, and other needed expertise will be provided through work assignments.

Under a work assignment SAIC will support the Office of Pesticide Programs in efforts to develop and implement a strategy to modify pesticide data bases. SAIC will provide technical support and on-going maintenance. This contract involves no subcontractors.

The Office of Water Enforcement and Permits and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), the contract with SAIC, prohibits use of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Water Enforcement and Permits and work assignment manager in the Office of Pesticide Programs. All information supplied to SAIC by EPA for use in connection with this contract will be returned to EPA when SAIC has completed its work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–10527 Filed 5–7–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100088; FRL–3889–2]

Computer Science Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted

information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Science Corporation (CSC) has been awarded a contract to perform work for the EPA Office of Compliance Monitoring, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to CSC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable CSC to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: CSC will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W0–0043, task order 123, CSC will provide technical data handling support for EPA's Office of Compliance Monitoring, Laboratory Data Integrity Assurance Division information system. CSC will assist with data base program modifications, update documentation for report production and other Laboratory Data Integrity Assurance Division information system operations. This contract involves no subcontractors.

The Office of Compliance Monitoring and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), the contract with CSC, prohibits use of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, CSC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Compliance Monitoring. All information supplied to CSC by EPA for use in connection with this contract will be returned to EPA when CSC has completed its work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–10528, Filed 5–7–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100089; FRL–3889–3]

Syracuse Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded two contracts to perform work for the EPA Office of Environmental Criteria and Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2). This transfer will enable SRC to fulfill the obligations of the contracts and this notice serves to notify affected persons.

DATES: Syracuse Research Corporation will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–C1–0004, SRC will provide technical support to EPA's Office of Environmental Criteria and Assessment in the evaluation of health environmental effects including aquatic toxicity, and environmental fate studies on the chemicals arsenic and lindane. Other chemicals may be included in SRC's work later in the contract. Readers may contact the person named above in approximately 1 year to learn if chemicals other than arsenic and lindane will be involved in this contract. This contract involves no subcontractors.

The Office of Environmental Criteria and Assessment and the Office of Pesticide Programs have jointly determined that Contract No. 68–C1–0004, involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2) the contract with SRC, prohibits use of the information for any purpose other than the purpose specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC has previously submitted for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provide to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Environmental Criteria and Assessment. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–10529 Filed 5–7–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP-100090; FRL-3889-4]

Environmental Management Support Inc. and Dynamac Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Environmental Management Support Inc. (EMS) and its subcontractor Dynamac Inc. have been awarded a contract to perform work for the EPA Office of Drinking Water, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to EMS and its subcontractor Dynamac Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable EMS and its subcontractor to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: EMS and its subcontractor Dynamac Inc. will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–C0–0006, EMS and its subcontractor Dynamac Inc. will provide technical support to EPA's Office of Drinking Water in the development of detailed and comprehensive data base regarding organic and inorganic chemicals encountered in drinking water. EMS and its subcontractor Dynamac Inc. will assist in the preparation of two types of documents, health effect criteria documents and health advisories for the purposes of: (1) Establishing a core information base concerning the health effects of the chemicals in drinking water, and (2) compiling and evaluating data useful in determining maximum contaminant level goals for the following identified chemicals.

Asulam
Bentazon
Bromacil
Bromoethane
Coumaphos
Cyanazine
Cyromazine
Dacthal
Dalapon
Dicamba
1, 3-Dichloropropene
Diclofop-methyl
Diquat
Endothall
Endrin
Fluazifop-butyl
Fomasafen
Glyphosate
Haloxyfop-methyl
Harmony
Lactofen
Metalaxyl
Metalochlor
Methomyl
Metribuzin
Naphthalene
4-Nitrophenyl
Oxamyl
Picloram
Primisulfuron-methyl
Prometon
Prometryn
Simazine
Thiodicarb
Trifluralin

The Office of Drinking Water and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), the contract with EMS and its subcontractor Dynamac Inc., prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor and subcontractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, EMS and its subcontractor Dynamac Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Drinking Water. All information supplied to EMS and its subcontractor by EPA for use in connection with this contract will be returned to EPA when EMS and its subcontractor have completed their work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–10530 Filed 5–7–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP-100086; FRL-3888-9]

Vigyan Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Vigyan Inc. has been awarded a contract to perform work for the EPA Office of Compliance Monitoring (OCM), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Vigyan Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Vigyan Inc. to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: Vigyan Inc. will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W9–0065, Delivery Order No. 002, Vigyan Inc. will provide automation support to EPA's Office of Compliance Monitoring by: (1) Developing an electronic document

sharing system to coordinate compliance referral activities within OCM, (2) enhancing the pesticide document management system to better support laboratory studies, (3) investigating current security environments of the OCM data systems, and (4) assisting in the implementation of a geographic information system application. This contract involves no subcontractors.

The Office of Compliance Monitoring and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Vigyan Inc., prohibits use of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Vigyan Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Compliance Monitoring. All information supplied to Vigyan Inc. by EPA for use in connection with this contract will be returned to EPA when Vigyan Inc. has completed its work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-10531 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50726; FRL-3891-1]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing of a nonindigenous strain of *Metarrhizium anisopliae* from the Mobay Corporation.

DATES: Written comments must be received on or before May 22, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Mobay Corporation of Kansas City, MO. The purpose of the proposed testing is to extend efficacy evaluations of this specific strain of *Metarrhizium anisopliae* to field trials on turf and ornamental potting soils. The field tests are to take place in Connecticut, Florida, Indiana, Kansas, Nebraska, New York, and Ohio for a total of less than 1 acre treated. Following the review of the application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: April 29, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-10899; Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-51762; FRL 3925-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 120 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 91-669, June 11, 1991.

P 91-670, 91-671, 91-672, June 12, 1991.

P 91-673, 91-674, 91-675, 91-676, 91-677, 91-678, 91-679, 91-680, 91-681, 91-682, 91-683, 91-684, June 15, 1991.

P 91-685, 91-686, June 16, 1991.

P 91-687, June 19, 1991.

P 91-688, June 18, 1991.

P 91-689, 91-690, June 19, 1991.

P 91-691, 91-692, 91-694, 91-696, 91-697, June 22, 1991.

P 91-698, June 24, 1991.

P 91-699, 91-700, 91-701, June 22, 1991.

P 91-702, 91-703, 91-704, 91-705, 91-706, 91-707, 91-708, 91-709, 91-710, 91-711, 91-712, 91-713, 91-714, 91-715, 91-716, 91-719, June 23, 1991.

P 91-720, June 26, 1991.

P 91-721, 91-722, 91-723, 91-724, 91-725, 91-726, 91-727, 91-728, June 23, 1991.

P 91-730, 91-731, 91-732, 91-733, 91-734, June 24, 1991.

P 91-735, 91-736, June 25, 1991.

P 91-737, 91-738, 91-740, 91-741, 91-742, June 26, 1991.

P 91-743, 91-744, 91-745, 91-746, 91-747, 91-748, 91-749, 91-750, 91-751, 91-752, 91-753, 91-754, 91-755, 91-756, June 30, 1991.

P 91–757, 91–758, 91–759, July 1, 1991.
P 91–760, 91–761, July 2, 1991.
P 91–762, 91–763, 91–764, 91–765, 91–766, 91–767, July 3, 1991.
P 91–768, July 6, 1991.
P 91–771, 91–772, 91–773, 91–774, 91–775, 91–776, 91–777, July 7, 1991.
P 91–778, July 9, 1991.
P 91–780, 91–781, 91–782, 91–783, 91–784, 91–785, 91–786, 91–787, 91–788, July 10, 1991.
P 91–789, 91–790, 91–791, 91–792, July 13, 1991.
P 91–795, 91–796, 91–797, 91–798, 91–799, July 14, 1991.

Written comments by:

P 91–669, May 12, 1991.
P 91–670, 91–671, 91–672, May 13, 1991.
P 91–673, 91–674, 91–675, 91–676, 91–677, 91–678, 91–679, 91–680, 91–681, 91–682, 91–683, 91–684, May 16, 1991.
P 91–685, 91–686, May 17, 1991.
P 91–687, May 20, 1991.
P 91–688, May 19, 1991.
P 91–689, 91–690, May 20, 1991.
P 91–691, 91–692, 91–694, 91–696, 91–697, May 23, 1991.
P 91–698, May 25, 1991.
P 91–699, 91–700, 91–701, May 23, 1991.
P 91–702, 91–703, 91–704, 91–705, 91–706, 91–707, 91–708, 91–709, 91–710, 91–711, 91–712, 91–713, 91–714, 91–715, 91–716, 91–719, May 24, 1991.
P 91–720, May 27, 1991.
P 91–721, 91–722, 91–723, 91–724, 91–725, 91–726, 91–727, 91–728, May 24, 1991.
P 91–730, 91–731, 91–732, 91–733, 91–734, May 25, 1991.
P 91–735, 91–736, May 26, 1991.
P 91–737, 91–738, 91–740, 91–741, 91–742, May 27, 1991.
P 91–743, 91–744, 91–745, 91–746, 91–747, 91–748, 91–749, 91–750, 91–751, 91–752, 91–753, 91–754, 91–755, 91–756, May 31, 1991.
P 91–757, 91–758, 91–759, June 1, 1991.
P 91–760, 91–761, June 2, 1991.
P 91–762, 91–763, 91–764, 91–765, 91–766, 91–767, June 3, 1991.
P 91–768, June 6, 1991.
P 91–771, 91–772, 91–773, 91–774, 91–775, 91–776, 91–777, June 7, 1991.
P 91–778, June 9, 1991.
P 91–780, 91–781, 91–782, 91–783, 91–784, 91–785, 91–786, 91–787, 91–788, June 10, 1991.
P 91–789, 91–790, 91–791, 91–792, June 13, 1991.
P 91–795, 91–796, 91–797, 91–798, 91–799, June 14, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS–51765)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm L–100, Washington, DC, 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm EB–44, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91–669

Manufacturer. Minnesota Mining & Manufacturing (3M).
Chemical. (G) Silicone polymer.
Use/Production. (S) Polymeric low surface energy coating for tape. Prod. range: Confidential.

P 91–670

Manufacturer. Confidential.
Chemical. (G) Fluorinated cotelomer.
Use/Production. (G) Destructive and dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91–671

Manufacturer. Confidential.
Chemical. (G) Fluorinated cotelomer.
Use/Production. (G) Destructive and dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91–672

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Ingredient for silicone RTV component. Import range: 120–400 ky/yr.

P 91–673

Manufacturer. Confidential.
Chemical. (G) Polyether polyol.
Use/Production. (G) Polyurethane foam manufacturing. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: time LC50 96H> 1,000 mg/l species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91–674

Importer. Confidential.
Chemical. (G) Rosin ester phenolic modified.
Use/Import. (S) Printing ink. Import range: Confidential.

P 91–675

Manufacturer. Confidential.
Chemical. (G) Modified acrylate/methacrylate polymer.
Use/Production. (G) Component of printing ink with open use. Prod. range: 48,000–400,000 kg/yr.

P 91–676

Manufacturer. Confidential.
Chemical. (G) Polymeric product of reactions of epoxy with organic acids and organic anhydride.
Use/Production. (G) Polymer for coating. Prod. range: Confidential.

P 91–677

Manufacturer. Confidential.
Chemical. (G) Polymeric product of reactions of epoxy with organics and organic anhydrides.
Use/Production. (G) Polymer for coating. Prod. range: Confidential.

P 91–678

Importer. Hoechst Celanese Corporative.
Chemical. (G) Fiber rective monoazo dyestuff.
Use/Import. (G) Polymer for coating. Import range: Confidential.

P 91–679

Manufacturer. Confidential.
Chemical. (G) (Disubstituted hydroxypolycycle) (alkylacetatoxypolycycle) substituted heteropolycycle.
Use/Production. (S) Organic synthesis. Prod. range: 15,000–45,000 kg/yr.

P 91–680

Importer. Bostik, Inc.
Chemical. (G) Polyurethane.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 91–681

Importer. Daicolor-Pope, Inc.
Chemical. (G) Polyacrylate ester.
Use/Import. (G) Matting agent for paint. Import range: Confidential.

P 91-682

Importer. Daicolor, Inc.

Chemical. (G) Polyacrylate ester.

Use/Import. (S) Matting agent for paints. Import range: 5,000–20,000 kg/yr.

P 91-683

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Ingredient in a casting formulation. Prod. range: 300,000–3,000,000 kg/yr.

P 91-684

Manufacturer. Confidential.

Chemical. (G) Amine functional polyurethane polyol.

Use/Production. (G) Ingredient in a casting formulation. Prod. range: 300,000–3,000,000 kg/yr.

P 91-685

Importer. Confidential.

Chemical. (G) Rosin modified phenolic resin.

Use/Import. (G) Component of printing ink, an open nondispersive use. Import range: Confidential.

P 91-686

Manufacturer. Confidential.

Chemical. (G) Vinyl heteromonocycle polymer with mixed alkenes.

Use/Production. (S) Visocosity index improver for lubricant oils. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 3 g/kg species (rat). Acute dermal toxicity: LD50 > 5 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Mutagenicity: negative. Skin irritation: moderate species (rabbit). Skin sensitization: negative species (guinea pig).

P 91-687

Importer. Confidential.

Chemical. (G) Sulfonic acid, alkylaryl, calcium salts, overbased.

Use/Import. (G) Petroleum product additive. Import range: Confidential.

P 91-688

Manufacturer. Dow Corning Corporation.

Chemical. (G) Dialkoxydialkylsiane.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 91-689

Manufacturer. Confidential.

Chemical. (G) Trisubstituted anthracene.

Use/Production. (G) Commercial and industrial use; component of coating solution. Prod. range: 700–2,500 kg/yr.

P 91-690

Manufacturer. Confidential.

Chemical. (G) Polymer of metacrylate esters, aryl olefin, and unsaturated urethane polyester.

Use/Production. (G) Dispersive coating. Prod. range: 250,000–1,500,000 kg/yr.

P 91-691

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Fluoroalkyl silane.

Use/Production. (G) Surface treatment. Prod. range: Confidential.

Toxicity Data. Skin irritation: strong species (rabbit).

P 91-692

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted naphthalene sulfonic acid salt.

Use/Production. (S) Fiber reactive dye for textile coloration. Prod. range: 2,500–10,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 4056 mg/kg species (rat).

P 91-694

Importer. Organic Dyestuffs Corporation.

Chemical. (S) 2,7-Napthalene disulfonic acid, 5-[(4-chloro-6-[(4-[(2-((sulfooxy)ethyl)sulfonyl phenyl)amino)-1,3,5-triazin-2-yl)amino)-4-hydroxy-3-(phenylazo)-trisodium salt.

Use/Import. (S) Shading color. Import range: 1,500–2,000 kg/yr.

P 91-696

Importer. Confidential.

Chemical. (G) *N,N,N,*-tetramethyl(alkyl bis(iminocarbonyl-p-phenylene azo(dihydro-methyl-oxo-substituted heteromonocycle-diyl)alkyl))alkyl)ammonium, mixed organic acid salts.

Use/Import. (S) Liquid dye for dyeing of paper. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit).

P 91-697

Manufacturer. Confidential.

Chemical. (G) Modified acrylic.

Use/Production. (G) Thermoplastic additive. Prod. range: Confidential.

P 91-698

Manufacturer. Americn Biltrite, Inc.

Chemical. (G) Urethane acrylate oligomer.

Use/Production. (G) Oligomer for a urethane coating. Prod. range: Confidential.

P 91-699

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium compound.

Use/Production. (G) Intermediate for the production of polymers. Prod. range: Confidential

P 91-700

Manufacturer. Confidential.

Chemical. (G) High solids alkyd resin.

Use/Production. (S) Metal finishes. Prod. range: Confidential.

P 91-701

Importer. Confidential.

Chemical. (G) Reaction product of 1,2-ethanediol and an organic acid.

Use/Import. (S) Acid donor for acid dyestuffs. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-702

Manufacturer. Confidential.

Chemical. (G) *N*-(Alkylamino dithoic acid) acrylate divinyl benzene copolymer.

Use/Production. (S) Ion exchange resin. Prod. range: Confidential.

P 91-703

Manufacturer. Confidential.

Chemical. (G) *N*-(Sodium alkylamino carboxylate) acrylate divinyl benzene copolymer.

Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-704

Manufacturer. Confidential.

Chemical. (G) *N*-(Sodium alkylamino carboxylate)acrylamide divinyl benzene copolymer.

Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-705

Manufacturer. Confidential.

Chemical. (G) *N*-(Alkylamino phosphplic acid) acrylamide divinyl benzene copolymer.

Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-706

Manufacturer. Confidential.

Chemical. (G) *N*-Alkylamino acrylamide divinyl benzene copolymer.

Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-707

Manufacturer. Confidential.

Chemical. (G) *N*-(Sodium alkylamine carboxylate) acrylmide divinyl benzene copolymer.

Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-708

Manufacturer. Confidential

Chemical. (G) *N*-(Alkylamino carboxylic acid) acrylamide divinyl benzene copolymer.

Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-709

Importer. Degussa Corporation.

Chemical. (S) 3-Thiocyanatopropyltrieththoxysilane thiocyanic acid, 3-(triethoxysilyl)propyl ester.

Use/Import. (G) Reinforming agent. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1.4 g/kg species (rat). Inhalation toxicity: LC50 > 22,2 g/kg species (rat). Eye irritation: none species (rabit). Static acute toxicity: time LC50 96H10–32 mg/k species (brachydanio rerio). Skin irritation: slight species (rabbit).

P 91-710

Manufacturer. Amoco Chemical Company.

Chemical. (G) Alkyl substituted doaromatic hydrocarbons.

Use/Production. (G) Industrial chemical. Prod. range: Confidential.

P 91-711

Manufacturer. Arizona Chemical Company.

Chemical. (G) Metal salt of fumerated rosin formaldehyde polymer.

Use/Production. (G) Printing ink component. Prod. range: Confidential.

P 91-712

Importer. Akzo Chemicals Inc.

Chemical. (S) Thioperoxydicarbonic diamide, tetrakis(phenyl)-.

Use/Import. (S) Acelerator for sulfur vulcanization. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Inhalation toxicity: LC50 > 5.03 mg/l species (rat). Eye irritation: moderate species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit).

P 91-713

Manufacturer. Bedoukian Research, Inc.

Chemical. (G) Olefinic alcohol.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-714

Manufacturer. Confidential.

Chemical. (G) Acid functional acrylic.

Use/Production. (G) Ingredient in a dispersively used coating. Prod. range: 50,000–200,000 kg/yr.

P 91-715

Manufacturer. Confidential.

Chemical. (G) Acid functional acrylic.

Use/Production. (G) Ingredient in a dispersively used coating. Prod. range: 50,000–200,000 kg/yr.

P 91-716

Manufacturer. Ciba-Geigy Corporation.

Chemical. (S) Acetic acids,(2-hdyroxy-1-(methoxymethyl)ethoxy)-, C10–16-alkyl ethers.

Use/Production. (S) Corrosion inhibitor for synthetic oils. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (Rabbit). Mutagenicity: negative. Static acute toxicity: time LC50 96H2.4 mg/l species (zebra fish). Skin irritation: moderate species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-719

Manufacturer. Mete-General, Inc.

Chemical. (G) Silica-Gel-im mobilized amine-bound nitrogen-contained ligand.

Use/Production. (S) Removal of dissolved heavy metals from wastewater. Prod. range: Confidential.

P 91-720

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

P 91-721

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide, ammonium salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-722

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide, monoethanolamine salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-723

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide, morpholine salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-724

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide, *N,N*-dimethylethanolamine salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-725

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide, 2-amine-2-methyl-propanol salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-726

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide, 2-dimethylamino-2-methyl-propanol salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-727

Manufacturer. Westvaco Corporatio.

Chemical. (G) Modified rosin ester amide, triethylamine salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-728

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin ester amide, diethylaminoethanol salt.

Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-730

Importer. Ausimont USA, Inc.

Chemical. (G) Polyhydroxy terminated perfluoropolyoxyalkane.

Use/Import. (S) An intermediate for polycondensation polymers. Import range: Confidential.

P 91-731

Importer. Ausimont USA,, Inc.

Chemical. (S) Alpha, omega bis(2-hydroxyethyloxy) perfluoropolyoxyalkane.

Use/Import. (S) An intermediate for polycondensation polymers. Import range: Confidential.

P 91-732

Manufacturer. Confidential.

Chemical. (G) Ammonium organophosphonate.

Use/Production. (G) Reaction rinse for improved corrosion protection and paint adhesion. Prod. range: Confidential.

P 91-733

Importer. Confidential.

Chemical. (G) Copolymer of acrylic and methacrylic esters.

Use/Import. (S) A coating additive used in paint formulate. Import range: Confidential.

P 91-734

Importer. Confidential.

Chemical. (G) Copolymer of methacrylic acid modified polyacrylat.

Use/Import. (S) A coating additive used in paint formulate. Import range: Confidential.

P 91-735

Manufacturer. Cook composites and polymers.

Chemical. (G) Medium oil alkyd.

Use/Production. (S) High solids primer. Prod. range: 36,300–90,800 kg/yr.

P 91–736

Importer. Confidential.
Chemical. (G) Copolymer of alkaenoic acid alkyd ester, substituted acrylonitrile and acrylonitrile, crosslinked.
Use/Import. (G) Polyester additive. Import range: 4,000–12,000 kg/yr.

P 91–737

Manufacturer. Pressure Chemical Company.
Chemical. (S) 1,2-Bis(diphenylphosphino)ethane.
Use/Production. (S) Research chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat).

P 91–738

Manufacturer. Pressure Chemical Company.
Chemical. (S) 1,2-Bis(diphenyl phosphino)ethane.
Use/Production. (S) Research chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat).

P 91–740

Manufacturer. Confidential.
Chemical. (G) Acid functional polyester.
Use/Production. (G) Dispersively applied coating binder. Prod. range: 223,000–670,000 kg/yr.

P 91–741

Manufacturer. Rohm & Haas Company.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 5.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91–742

Manufacturer. Rohm & Haas Company.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 5.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91–743

Importer. Henkel Corporation.
Chemical. (G) Fatty acid ester.
Use/Import. (G) Plastic additive. Import range: Confidential.

P 91–744

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–745

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–746

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–747

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–748

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–749

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–750

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–751

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–752

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–753

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–754

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–755

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91–756

Manufacturer. MTM Americas, Inc./ Hardwicks Division.
Chemical. (G) Methacrylalkylbisbenzenesulfonamide.
Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 91–757

Manufacturer. Huls America, Inc.
Chemical. (G) Alkydialkoxysilane.
Use/Production. (G) Catalyst additive. Prod. range: Confidential.

P 91–758

Manufacturer. Confidential.
Chemical. (G) Epoxy adduct.
Use/Production. (G) Intermediate for use in formulation of coating. Prod. range: Confidential.

P 91–759

Manufacturer. Confidential.
Chemical. (G) Functional vinyl acetate polymer.
Use/Production. (G) Wood adhesive for furniture and constructor. Prod. range: Confidential.

P 91–760

Manufacturer. Confidential.
Chemical. (G) Yellow shade naphthol.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91–761

Manufacturer. Confidential.
Chemical. (G) Reaction product of poly alkyl amines and alkyl substituted phenolic amines.
Use/Production. (G) Epoxy hardener. Prod. range: Confidential.

P 91–762

Importer. Confidential.
Chemical. (S) Linear and branched undecanol.
Use/Import. (G) Surfactant raw material. Import range: Confidential.

P 91–763

Manufacturer. Confidential.

Chemical. (S) Polymer of ethylene oxide, alcohol, potassium hydroxide, and acetic acid.

Use/Production. (S) Surfactant for metal working. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: time LC50 96H10-100 mg/l species (zebra fish). Skin irritation: negligible species (rabbit).

P 91-764

Manufacturer. The C.P. Hall Company.

Chemical. (S) Polymer of hexanedioic acid dimethyl ester,; pentanedioic acid dimethyl ester, and 1,6-hexanediol.

Use/Production. (S) Intermediate for urethanes. Prod. range: Confidential.

P 91-765

Manufacturer. Confidential.

Chemical. (G) Polyfulfide polymer.

Use/Production. (G) Component of a formulated agent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 317 mg/kg species (rat). Acute dermal toxicity: LD50 850 mg/kg species (rabbit). Inhalation toxicity: LC50 316 mg/M3 species (rat).

P 91-766

Importer. Confidential.

Chemical. (G) Polyoxyalkylene polyester urethane block polymer.

Use/Import. (G) Additive, open, nondispersive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-767

Importer. Confidential.

Chemical. (G) Copolymer of butylmethacrylate, hydroxyethylmethacrylate ester and a heterocyclic vinyl compound.

Use/Import. (G) Additive, open nondispersive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-768

Importer. MTC America, Inc.

Chemical. (G) Amino resin.

Use/Import. (S) Cross-linking agent for thermosetting coating. Import range: Confidential.

P 91-771

Manufacturer. Confidential.

Chemical. (S) 1,3-bis(disubstituted amino)-2-chloropropane.

Use/Production. (S) Starch modification. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time EC50 96H83.8 mg/l species (freshwater alga).

P 91-772

Manufacturer. Texaco Chemical Company.

Chemical. (S) 2-Propanamine, 1-methoxy-.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3 g/kg species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 91-773

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Fatty acids, polymer with polyols and aromatic carboxylic acids.

Use/Production. (S) Industrial coatings. Prod. range: Confidential.

P 91-774

Manufacturer. Olin Corporation.

Chemical. (S) 1,2,4-Triazol-5-one.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-775

Manufacturer. Olin Corporation.

Chemical. (S) 3-Nitro-1,2,4-triazol-5-one.

Use/Production. (S) Explosive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Skin irritation: slight species (rabbit). Skin sensitization: negative species (guinea pig).

P 91-776

Manufacturer. King Industrial, Inc.

Chemical. (G) Alkyl dicarboxylic acid monoester, strontrium salt.

Use/Production. (S) Lubricant additive. Prod. range: Confidential.

Toxicity Data. Eye irritation: strong species (rabbit). Skin irritation: moderate species (rabbit).

P 91-777

Manufacturer. Confidential.

Chemical. (S) Mixture of 4-methyl-1,4-hexadiene and 5-methyl-1,4-hexadiene.

Use/Production. (S) Common for polyolefin production. Prod. range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 91-778

Manufacturer. Confidential.

Chemical. (G) Yellow shade naphthol.

Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

P 91-780

Manufacturer. Confidential.

Chemical. (G) Glycol modified phthalate ester.

Use/Production. (G) Sunthetic fluid. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: slight species (rabbit).

P 91-781

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Polyamic acid.

Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-782

Manufacturer. Confidential.

Chemical. (G) Polyimide.

Use/Production. (G) Mechanical parts. Prod. range: Confidential.

P 91-783

Manufacturer. Confidential.

Chemical. (G) Short oil alkyd resin solution.

Use/Production. (S) Metal primers. Prod. range: Confidential.

P 91-784

Manufacturer. Confidential.

Chemical. (G) Chlorinated diene polymer.

Use/Production. (G) A rubber adhesive. Prod. range: Confidential.

P 91-785

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosiloxane.

Use/Import. (S) Cross-linking agent for silicone rubber compounds or coating. Import range: 200–400 kg/yr.

P 91-786

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosiloxane.

Use/Import. (S) Cross-linking agent for silicone rubber compounds or coating. Import range: 600–900 kg/yr.

P 91-787

Importer. Zeon Chemicals U.S.A., Inc.

Chemical. (G) Acrylonitrile copolymer.

Use/Import. (S) Heat and oil resistant rubber. Import range: 5,000–50,000 kg/yr.

P 91-788

Manufacturer. Zeon Chemicals U.S.A., Inc.

Chemical. (G) Acrylonnitrile copolymer.

Use/Production. (S) Heat and oil resistant rubber. Prod. range: 5,000–50,000 kg/yr.

P 91-789

Manufacturer. Confidential.

Chemical. (G) Silane silicate resin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-790

Manufacturer. Confidential.

Chemical. (G) Quaternized amino polymer.

Use/Production. (G) Stabilizing agent. Prod. range: Confidential.

P 91-791

Manufacturer. Confidential.

Chemical. (G) Modified aliphatic phosphite esters.

Use/Production. (G) Dispersively applied coating. Prod. range: 22,175–66,500 kg/yr.

P 91-792

Manufacturer. Confidential.

Chemical. (G) Polyester urethane acrylate oligomer.

Use/Production. (S) Modifier radiation coating. Prod. range: Confidential.

P 91-795

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

P 91-796

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

P 91-797

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

P 91-798

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

P 91-799

Manufacturer. Confidential.

Chemical. (G) Polymer of alkaline glycols, benzene dicarboxylic acid capped with trimellitic anhydride.

Use/Production. (G) Degree of containment; open nondispersive use. Prod. range: Confidential.

Dated: May 2, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-10901; Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3954-6]

Revision of the Tennessee National Pollutant Discharge Elimination System (NPDES) Program to Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Tennessee.

SUMMARY: On April 18, 1991, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV approved the State of Tennessee's National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Tennessee to issue general permits in lieu of individual NPDES permits. EPA has determined this program modification to be non-substantial for several reasons. First, at the time the state first publicly noticed the proposed modification in 1986, essentially no commenters specifically challenged the State's authority to administer a general permit program. Second, from consistency standpoint, EPA has traditionally viewed general permit program modifications as non-substantial. Finally, given the regulated community's need to know storm water permit application requirements, the finalization of this approval should proceed as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Acting Chief, Facilities Performance Branch, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/347-4793.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provides for the issuance of general permits to regulate discharge of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Tennessee was authorized to administer the NPDES program in December 1977. Their program as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For those reasons the Tennessee Department of Conservation requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: stormwater discharges from municipal and industrial sites, hydrostatic test water, non-contact cooling water of one million gallons per day or less, filter backwash water discharges from potable water treatment plants, underground storage tank remediation sites, and erosion control landfills.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Tennessee submitted in support of its request, copies of the relevant statues and regulations and proposed regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statues and regulations that the State will have adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c) upon adoption of its proposed regulations. In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Tennessee's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Tennessee's authority to issue general permits.

STATE NPDES PROGRAM STATUS

States	Approved state NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved state general permits program
Alabama	10/19/79	10/19/79	10/19/79	—
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	—	—	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	—
Delaware	04/01/74	—	—	—
Georgia	06/28/74	12/08/80	03/12/81	—
Hawaii	11/28/74	06/01/79	08/12/83	
Illinois	10/23/77	09/20/79	—	01/04/84
Indiana	01/01/75	12/09/78	—	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	—
Kansas	06/28/74	08/28/85	—	—
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	—
Michigan	10/17/73	12/09/78	06/07/83	—
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	—
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	—	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	—	—
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	—	—
North Carolina	10/19/75	09/28/84	06/14/82	—
North Dakota	06/13/75	01/22/90	—	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	—
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	—	—
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	—
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	—	03/16/82	—
Virgin Islands	06/30/76	—	—	—
Virginia	03/31/75	02/98/82	04/14/89	—
Washington	11/14/73	—	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	—	—
Total	39	34	27	17

Note: Complete State Programs (NPDES, Federal Facilities & Pretreatment): 27.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number small entities. Approval of the Tennessee NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Tennessee NPDES State General Permits Program merely provides a simplified administrative process.

Dated: April 18, 1991.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 91-10789 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION BETWEEN: 041591 AND 042691

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Spinnaker Investor Partners, L.P., Fiat S.p.A., Hesston Corporation	91-0792	04/15/91
Corning Incorporated, SciCor Inc, SciCor Inc	91-0766	04/16/91
Capina Melkunie by, William R. Berkley, Deltown Corporation	91-0723	04/17/91
Ragione Inc., Robert O. Naegele, Jr., Rollerblade, Inc.	91-0753	04/17/91
Forvaltnings AB Providentia, Saab-Scania AB, Saab-Scania AB	91-0796	04/17/91
AB Investor, Saab-Scania AB, Saab-Scania AB	91-0797	04/17/91
FPL Group, Inc., The Southern Company, Georgia Power Company's Scherer Unit no. 4	91-0732	04/18/91
The Restaurant Enterprises Group, Inc., Marriott Corporation, Marriott Family Restaurants, Inc.	91-0780	04/18/91
Automatic Data Processing, Inc., Robert F. White, Jr. Robert F. White & Co.	91-0787	04/18/91
Harry Gray, Mel Klein & Partners, L.P., Hanover Energy, Inc., Hanover Energy, Inc.	91-0784	04/19/91
American Financial Corporation, American Financial Corporation, Spelling Entertainment Inc.	91-0805	04/19/91
American Financial Corporation, Aaron Spelling, Spelling Entertainment Inc.	91-0811	04/19/91
First Bank System, Inc., First Interstate Bancorp, First Interstate Bancard Company, NA	91-0779	04/22/91
First Bank System, Inc., Wells Fargo, & Company, Wells Fargo Ag Credit	91-0768	04/24/91
Arkla, Inc., The Hunter Company, Inc., The Hunter Company, Inc.	91-0786	04/24/91
JHM Mortgage Securities L.P., Dominion Bankshares Corporation, certain assets of Dominion Bankshares Mortgage Corp	91-0813	04/25/91
Westdeutsche Landesbank Girozentrale, Security Pacific Corporation, Security Pacific Trade Finance Inc.	91-0773	04/26/91
The Broken Hill Proprietary Company Limited, SupraCote, Inc. Employee Ownership Plan, SupraCote, Inc.	91-0794	04/26/91
FFI Partners, American Stores Company, Alpha Beta Company	91-0803	04/26/91
Northern States Power Company, ASEA AB, Combustion Funding Corporation	91-0816	04/26/91
Northern State Power Company, BBC Brown Boveri Ltd., Combustion Funding Corporation	91-0817	04/26/91
Veba AG, Memec (Memory and Electronic Components) 'PLC, Memec (Memory and Electronic Components) 'PLC	91-0824	04/26/91
Acadia Partners, L.P., Alvey Holdings, Inc., Alvey Holdings, Inc.	91-0827	04/26/91
Klaus J. Jacobs, Asko Deutsche Kaufhaus Aktiengesellschaft, JAA Holdings, S.A.	91-0828	04/26/91
Oswaldo Cisneros, TPI Enterprises, Inc., TPI Enterprises, Inc.	91-0835	04/26/91
ITT Corporation, Security Pacific Corporation, Security Pacific Housing Securities Inc.	91-0840	04/26/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-10897 Filed 5-7-91; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Office of Business, Industry and Governmental Affairs; Business Advisory Board; Meeting

Meeting Notice: Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet May 30, 1991, from 10 a.m. to 4 p.m. at GSA's Central Office, 18th and F Streets, NW., Room 5141A, Washington, DC. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. app. 2, and the implementing regulation, 41 CFR 101-6.

The purpose of the meeting is to provide a forum for discussion on key business and industry trends, emerging technologies and products, and other issues that may affect GSA's future policy and program formulation. The agenda for this meeting will include discussion on: Metrication; environmental obligations of the Federal government; electronic data interchange; and Workforce 2000.

The meeting will be open to the public.

For further information, contact James M. Davis (202/501-3903) or Mary Ann Webster (202/501-4177) of the Office of Business, Industry and Governmental Affairs, GSA/AL, Washington, DC, 20405.

Dated: April 30, 1991.

Donald C.J. Gray,

Associate Administrator for Business, Industry and Governmental Affairs, GSA.

[FR Doc. 91-10893 Filed 5-7-91; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Thursday, May 23, from 2 to 5:30 p.m., and on Friday, May 24, from 8 a.m. to 1 p.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on May 23, 1991, from 9 a.m. to 12:30 p.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Judith D. Moore, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 5600 Fishers Lane, room 18A-30, Rockville, Maryland 20857, (301) 443-9942.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research, on matters related to the actions of the Agency to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through

scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D.; George A. Beller, M.D.; Mr. Edward C. Bessey; Joseph F. Boyle, M.D.; Linda Burnes-Bolton, Dr.P.H.; Joseph T. Curti, M.D.; Gary L. Filerman, Ph.D.; Juanita W. Fleming, Ph.D.; David Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Mr. Walter J. McNerney; Lawrence H. Meskin, D.D.S., Ph.D.; Barbara Starfield, M.D.; and Sister M. Eileen Wilhelm.

There also are Federal ex officio Members. These members are:

Administrator, Alcohol, Drug Abuse and Mental Health Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, May 23, 1991, the closed portion of the meeting will begin with a session to review grant applications from 9 a.m. to 12:30 p.m. The open portion of the meeting, beginning at 2 p.m., will consist of presentations by principal investigators of several Patient Outcome Research Teams on medical effectiveness research programs sponsored by the Agency for Health Care Policy and Research (AHCPR). The meeting will recess at 5:30 p.m.

An open public meeting will recommence on Friday, May 24. The agenda for this day includes a presentation from officials of the Health Care Financing Administration, and updates and presentations from staff of AHCPR. The meeting will adjourn at 1 p.m.

Agenda items are subject to change as priorities dictate.

Dated: May 2, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91-10928 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control

[Program Announcement No. 121]

Early Detection and Control of Breast and Cervical Cancer

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year (FY) 1991 for new competing cooperative agreements to initiate comprehensive breast and cervical cancer control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of the early detection and control of cancer. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized by the Public Health Service Act (PHS Act), title XV, (42 U.S.C. 300k et seq.) established by Public Law 101-354, "Breast and Cervical Cancer Mortality Prevention Act of 1990", section 301(a) (42 U.S.C. 241(a)), and section 317(k)(3) (42 U.S.C. 247b(k)(3)).

Eligible Applicants

Eligible applicants are official state public health agencies excluding Colorado, Minnesota, South Carolina, and West Virginia. For this announcement, the term "state" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. The official state public health agencies of Colorado, Minnesota, South Carolina, and West Virginia were funded during Fiscal Year 1990 under a similar announcement (Program Announcement Number 032) and are eligible during FY 1991 under Program Announcement 122.

Availability of Funds

Approximately $13,000,000 will be available in FY 1991 for initiating up to five comprehensive breast and cervical cancer screening and follow-up programs. Individual awards are expected to average $3,000,000 with a range from $2,500,000 to $3,500,000. Funding estimates are subject to change. The 12-month budget period is anticipated to begin on or about June 15, 1991. Continuation awards within the 1- to 5-year project period will be made on the basis of satisfactory programmatic progress and the availability of funds. CDC anticipates additional funds will be available in FY 1992 to cover continuation states and award cooperative agreements to approximately 4 additional states.

Requests for direct assistance (i.e., CDC personnel "in lieu of cash") for personnel to assist in organizing and conducting the project described in this announcement are encouraged.

Purpose

The purpose of entering into cooperative agreements with state health agencies is to support their efforts to provide comprehensive breast and cervical cancer control programs. Special attention should be given to ensure the participation of women who are of low income, uninsured, underinsured, minority, Native American and/or served by Health Resources and Services Administration primary care centers and/or Title X Family Planning fund recipients.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under A. below and CDC will be responsible for conducting activities under B. below.

A. Recipient Activities

The following eight elements are essential and integral components of the state's comprehensive breast and cervical cancer program activities:

1. Screening

The intent of this cooperative agreement is to increase screening among all groups of women in the state, with special efforts to reach those women who are of low income, uninsured, underinsured, minority, Native American and/or served by Health Resources and Services Administration primary care centers and/or title X Family Planning fund recipients. The program should include links with the public, private and voluntary sectors.

a. *Priority for Low Income Women (1504(a), PHS Act).* Cooperative agreements may not be awarded under section 1501 of the PHS Act unless the state involved agrees that low-income women will be given priority in the provision of services and activities pursuant to subsections 1501(a) (1) and (2), PHS Act.

b. *Statewide Provision of Services (1504(c), PHS Act).* Cooperative agreement funds may not be awarded under section 1501, PHS Act, unless the state involved agrees that services and activities under the grant will be made available throughout the state, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act).

CDC may waive the requirement for Statewide Provision of Services if it is determined that compliance by the state with the requirement would result in an inefficient allocation of resources with respect to carrying out the purpose described in section 1501(a), PHS Act.

c. *Relationship To Items and Services Under Other Programs (1504(d), PHS Act).* Cooperative agreement funds will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such items or services:

(1) Under any state compensation program, under an insurance policy, under any Federal or state health benefits program; or

(2) By any entity that provides health services on a prepaid basis.

d. *Limitation on Imposition of Fees for Services (1504(b), PHS Act).* If charges are to be imposed for the provision of services or activities under the cooperative agreement, such charges:

(1) Will be according to guidelines described in the interim final rule (42 CFR 405.534) of the **Federal Register**, Vol. 55, No. 251, December 31, 1990, pages 53510–53525, inclusive, which implements section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), which provides limited coverage for screening mammography services;

(2) Will be made according to a schedule of charges that is made available to the public;

(3) Will be adjusted to reflect the income of the woman involved;

(4) State poverty guidelines are to be used in establishing income eligibility requirements; and

(5) Will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

e. *Screening Services Guidelines (1503(a), PHS Act).* For those women who meet the above criteria, screening services can be made available according to the following guidelines:

(1) Only women age 40 or older will be eligible for screening mammography;

(2) Screening will include a physical examination and mammography according to the National Cancer Institute (NCI) guidelines and the American Cancer Society (ACS) guidelines for women age 40 and older;

(3) All women who are, or who have been sexually active, or who have reached the age of 18, should have an annual Pap test and pelvic examination; and

(4) After a woman has had three or more consecutive satisfactory normal annual examinations, the Pap test may be performed less frequently at the discretion of her physician.

f. *Coordination With Other Breast and Cervical Cancer Programs (1504(e), PHS Act).* Cooperative agreement funds may not be awarded unless the state agrees that the services and activities funded through the cooperative agreement shall be coordinated with other Federal, state, and local breast and cervical cancer activities.

2. Follow-Up

Providing follow-up and continuity of care is an essential component of any comprehensive breast and cervical cancer control program. A system must be in place to assure appropriate referrals, tracking, follow-up and treatment for those women who receive screening services through this program and whose screening tests are interpreted as abnormal or suspicious (1501(a)(2), PHS Act). For purposes of follow-up, cooperative agreement funds may be expended for the public health tracking system and for the following services using the same eligibility requirements outlined in section 1, Screening (above):

a. Cervical cancer—repeat Pap smears, colposcopy and colposcopy-directed biopsy; and/or

b. Breast cancer—repeat mammography and diagnostic mammography.

3. Public Education

Public education includes the systematic design and sustained delivery of a combination of methods which will contribute to the early detection and control of breast and cervical cancer. Successful public education programs are those that influence knowledge, attitudes and practices related to breast and cervical cancer screening in target populations. (1501(a)(3), PHS Act)

4. Professional Education

Health care providers play a central role in assuring that women are screened at appropriate intervals, that the screening tests are performed optimally and the women with abnormal test results receive appropriate diagnostic follow-up and treatment. A health care provider education program, which effectively transmits information on the efficacy and appropriate use of screening procedures, must inform providers and demonstrate an influence on practice, including an improved level of test interpretation and diagnostic and therapeutic follow-up for abnormal results. (1501(a)(4), PHS Act)

5. Quality Assurance

Quality assurance is necessary to ensure that screening tests are performed optimally (1501(a)(5), PHS Act). Include a description of the existing quality assurance program or the program that will be developed.

a. *Breast*—(1) *Use of Improved Screening Procedures (1503(b), PHS Act)* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(A) of the PHS Act (i.e. physical examination of the breasts and mammography) becomes commonly available and is recommended for use, and entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening for Breast Cancer (1503(c), PHS Act)* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act, unless the state involved agrees that the state will assure the quality of any screening procedure for breast cancer conducted pursuant to such section and, in the case of mammography, will provide that:

(a) The equipment used to perform the mammography will be specifically designed for mammography and will meet appropriate radiologic standards for mammography such as those of the American College of Radiology;

(b) The mammography will be performed by an individual who is licensed by the state to perform radiological procedures or is certified as qualified to perform radiological procedures by the American Registry of Radiologic Technicologists or their equivalent;

(c) The results of the mammography will be interpreted by a physician who is certified as qualified to interpret radiological procedures by the American Board of Radiology or the American Osteopathic Board of Radiology or is certified as qualified to interpret screening mammography procedures by an appropriate program for assuring the qualifications of the individual with respect to such interpretations; and

(d) With respect to the first screening mammography performed on a woman for which payment is made pursuant to section 1501(a), PHS Act, there are satisfactory assurances that the results of the mammography will be placed in

permanent medical records maintained with respect to the woman.

b. *Cervix—(1) Use of Improved Screening Procedures (1503(b), PHS Act).* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(B) of the PHS Act (i.e. pelvic examination and Pap smear) becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening for Cervical Cancer (1503(d), PHS Act).* Cooperative agreement funds may not be awarded unless the state involved agrees that the state will assure the quality of any screening procedure for cervical cancer conducted pursuant to such section and, in the case of the Pap smear (or other cytological screening procedure replacing the Pap smear pursuant to section 1503(b) of the PHS Act) will provide:

(a) The maximum number of cytology slides that any individual may screen in a 24-hour period;

(b) Requirements that a clinical laboratory maintain a record of the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory and the number of hours devoted during each 24-hour period to screening cytology slides by such individual;

(c) Criteria for requiring rescreening of cytological preparations, such as random rescreening of cytology specimens determined to be in the benign category; focused rescreening of such preparations in high risk groups; and for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available;

(d) Periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions;

(e) Procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides;

(f) Requirements that all cytological screening be done on the premises of an appropriately qualified laboratory;

(g) Requirements for the retention of cytology slides by laboratories for appropriate periods of time; and

(h) Requirements of periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

Guidelines with Respect to Quality of Mammography and Cytological Services (1503(e), PHS Act). The Department of Health and Human Services (DHHS) will be establishing guidelines for assuring the quality of any mammography and cytological screening procedure conducted pursuant to section 1501(a) of the PHS Act.

Such guidelines with respect to mammography will include the provisions of subsections 1503 (c)(1) through (c)(4) of the PHS Act and such guidelines with respect to cytological screening procedures will include the provisions of subsections 1503 (d)(1) through (d)(8) of the PHS Act.

Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that the state will, with respect to any mammography or cytological screening procedure conducted pursuant to such section, ensure that the procedure is conducted in accordance with guidelines issued by DHHS.

With respect to circumstances in which a state receives a grant under section 1501, PHS Act, before the issuance of the DHHS guidelines, the absence of such guidelines will not affect (1) the obligation of the state pursuant to section 1501(a)(1) to provide for screening procedures and referrals or (2) the obligations under section 1503 (c) and (d) with respect to providing for quality in the screening procedures.

6. Surveillance

Monitoring the distribution and the determinants of breast and cervical cancer incidence and mortality is necessary to evaluate a comprehensive cancer control program (1501(a)(6), PHS Act). To do this, a surveillance system should include:

a. Collection of information on incidence, staging at diagnosis and mortality from breast and cervical cancers;

b. Identification of segments of the population at higher risk for disease and for failure to be screened;

c. Identification of factors contributing to the disease burden, such as behavioral risk factors and limited or inequitable access to early detection and treatment services;

d. Establishment of a surveillance system to monitor the number and characteristics of women screened and outcomes of screenings;

e. Monitoring of screening resources, including the number of mammography facilities, cytology laboratories and providers of cytology screening; and

f. Design and implementation of case studies and other epidemiologic investigations to determine factors associated with avoidable morbidity and mortality.

7. Evaluation

Attention should be given to the design and development of individual components to ensure that there can be meaningful evaluation. The evaluation plan should assess the implementation and effectiveness of intervention components, including:

a. Screening;

b. Follow-up;

c. Public education;

d. Professional education;

e. Quality assurance; and

f. Surveillance.

At a minimum, the evaluation plan should include the following:

a. A description of the evaluation plan and how evaluation results will be used; and

b. A description of methods to assess the implementation of program activities, changes in the program and changes in participant and provider behavior.

8. Breast and Cervical Cancer Control Plan and Coalition

A comprehensive breast and cervical cancer control program should include the following:

a. A state-level cancer control coalition which includes representation from key private, voluntary (e.g., American Cancer Society) and public cancer organizations, the state "Healthy People 2000" coalition (should such a coalition exist in the state), and consumers;

b. Goals and objectives to address breast and cervical cancer control;

c. Proposed strategies to meet those objectives; and

d. Assessment of existing and needed resources to implement the comprehensive breast and cervical cancer control program.

B. CDC Activities

CDC and other recipients financially assisted by CDC will collaborate with the state health agencies in developing the components of their comprehensive breast and cervical cancer control program to include the five following activities:

1. Convene recipients for regular information-sharing and training;

2. Collaborate in the design and implementation of program activities;

3. Collaborate in the development of surveillance and data systems and in the state's analysis and evaluation of these data systems;

4. Collaborate in the development of public and professional education components; and

5. Collaborate in the development of quality assurance programs for mammography and cervical cytology.

Evaluation Criteria

The initial application will be reviewed and evaluated based upon the following weighted criteria:

1. The level of coordinated support and participation from community and voluntary agencies, professional health care organizations and providers toward integrating program elements into the health care delivery system for the at-risk population; (10 points)

2. The extent to which the applicant describes the breast and cervical cancer program needs of the target population, justifies the focus on these populations and the assurance of appropriate screening, follow-up and treatment services; (10 points)

3. The consistency of the specific and time-related measurable objectives with the stated purposes of the cooperative agreement; (10 points)

4. The qualifications and appropriateness of proposed personnel; (10 points)

5. The quality of the public education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)

6. The quality of the professional education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)

7. The quality of the mammography and cervical cytology quality assurance plan; (10 points)

8. The quality of the surveillance plan, demonstrated ability to analyze data and evidence of the continued existence of data sources; (10 points)

9. The documentation and appropriateness of the proposed or existing cancer plan and the role of the coalition in proposed activities; (10 points)

10. The quality of the applicant's evaluation plan; (10 points) and

11. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not Weighted)

Use of Cooperative Agreement Funds

A. Cooperative agreement funds shall be used to establish a public health response to prevent unnecessary breast and cervical mortality including:

1. Assuring screening of women for breast and cervical cancer as a preventive health measure;

2. Assuring appropriate referrals for follow-up services for women with abnormal screening tests;

3. Developing and disseminating public education programs for the early detection and control of breast and cervical cancer;

4. Improving the education, training and skills of health professionals (including allied health professionals) in the early detection and control of breast and cervical cancer;

5. Establishing mechanisms through which the states can monitor the quality of breast and cervical cancer screening procedures in the state, including the interpretation of such procedures;

6. Evaluating program activities through appropriate surveillance and monitoring. (1501(a), PHS Act)

B. Initially, and throughout the period of the cooperative agreement, at least 60 percent of the cooperative agreement funds are to be expended for services as described in Items 1 and 2 of this section. These services must be initiated upon receipt of funds. Developmental work for Items 3 through 6 (not more than 40 percent) must also be initiated upon receipt of funding and be fully operational by the end of the second year. (1503(a), PHS Act)

C. The state must ensure that no more than 10 percent of cooperative agreement funds will be expended for annual administrative costs. A state may not use in excess of 10 percent of amounts expended under the cooperative agreement for administrative functions. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate. (1504(f), PHS Act)

D. Cooperative agreement funds shall not be used for treatment or treatment services.

Recipient Financial Participation

This program requires the state to make available non-Federal contributions in cash or in kind toward such cost in an amount equal to not less than $1 for each $3 of Federal funds provided. Such contributions may be made directly or through donations from public or private entities, including the payment for treatment services or the donation of treatment services as a result of state-based breast and cervical cancer control screening efforts. Funds provided or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions. For purposes of determining the amount of non-Federal contributions, states may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the state for the 2-year period preceding the first fiscal year for which the state is applying to receive a cooperative agreement for a comprehensive breast and cervical cancer control program. In making a determination of the amount of non-Federal contributions for purposes of matching fund requirements, applicants may include any non-Federal amounts expended pursuant to Title XIX of the Social Security Act for the purpose of screening and follow-up for women at risk for breast and cervical cancer. (1502, PHS Act)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This Order sets up a system for state and local review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.919.

Other Requirements

Recipients of Cooperative Agreements must agree to:

(1) Establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the state under such section; and

(2) Upon request, provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the

United States for purposes of auditing the expenditures by the state of the grant.

Recipients of Cooperative Agreements must agree to submit the following reports:

(1) Quarterly status reports on project activities, accomplishments and difficulties are to be submitted to CDC within 30 days after the end of each quarter.

(2) Annual financial status reports must be submitted no later than 90 days after the end of each budget period.

(3) Final financial status and program summary reports are required no later than 90 days after the end of the project period.

Projects involving the collection of information from 10 or more individuals and funded by a cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 must be submitted to Candice Nowicki, Grants Management Officer, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305 on or before May 17, 1991. Applications will be considered to meet the deadline if they are received at the above address on or before the stated deadline date or if they bear a postmark of May 17, 1991, and are received in time for submission to the independent review group. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

Applications which do not meet the above criteria will be considered late applications, will not be considered in the current competitive cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305, telephone (404) 842–6508 or FTS 236–6508.

Programmatic technical assistance may be obtained from Duke Bell, Cancer Prevention and Control Branch, Division of Chronic Disease Control and Community Intervention, Mailstop K52, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333. telephone (404) 488–5483 or FTS 236–5483.

Please refer to Program Announcement Number 121 when requesting information and submitting any application in response to this Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) of Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: May 1, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

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[Program Announcement No. 122]

Early Detection and Control of Breast and Cervical Cancer

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year (FY) 1991 for new competing cooperative agreements to initiate comprehensive breast and cervical cancer control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of the early detection and control of cancer. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized by the Public Health Service Act (PHS Act), title XV, (42 U.S.C. 300k et seq.) established by Public Law 101–354, "Breast and Cervical Cancer Mortality Prevention Act of 1990", section 301(a) (42 U.S.C. 241(a)), and section 317(k)(3) (42 U.S.C. 247b(k)(c)).

Eligible Applicants

Eligible applicants are the official state public health agencies of Colorado, Minnesota, South Carolina, and West Virginia. These states are the only recipients of funds awarded under Program Announcement Number 032 in FY 1990.

This announcement implements provisions of title XV of the PHS Act (42 U.S.C. 300k et. seq.) established by Public Law 101–354, "Breast and Cervical Cancer Mortality Prevention Act of 1990", and replaces Program Announcement 032, published in the **Federal Register**, Vol. 55, No. 93, May 21, 1990, pages 20851–20854, inclusive. During FY 1990, the State health agencies of Colorado, Minnesota, South Carolina, and West Virginia were awarded cooperative agreements under Announcement 032 to develop comprehensive breast and cervical cancer control programs. Title IV sets forth significant new requirements in both the financial participation and recipient activities compared to the previously announced program. This announcement clearly defines the provisions of title XV and enables previously funded states to compete on the basis of experience for "screening and follow-up" components which constitute a second-year requirement for states applying for funds under Program Announcement 122.

Availability of Funds

Approximately $10,000,000 will be available in FY 1991 for initiating up to four comprehensive breast and cervical cancer screening and follow-up programs. Individual awards are expected to average $2,500,000 with a range from $2,000,000 to $3,000,000. Funding estimates are subject to change. The 12-month budget period is anticipated to begin on or about May 31, 1991. Continuation awards within the 5-year project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

Requests for direct assistance (i.e., CDC personnel "in lieu of cash") for personnel to assist in organizing and conducting the project described in this announcement are encouraged.

Purpose

The purpose of entering into cooperative agreements with state health agencies is to support their efforts to provide comprehensive breast and cervical cancer control programs.

Special attention should be given to ensure the participation of women who are of low income, uninsured, underinsured, minority, Native American and/or served by Health Resources and Services Administration primary care centers and/or Title X Family Planning fund recipients.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under A. below and CDC will be responsible for conducting activities under B. below.

A. Recipient Activities

The following eight elements are essential and integral components of the state's comprehensive breast and cervical cancer program activities:

1. Screening

The intent of this cooperative agreement is to increase screening among all groups of women in the state, with special efforts to reach those women who are of low income, uninsured, underinsured, minority, Native American and/or served by Health Resources and Services Administration primary care centers and/or Title X Family Planning fund recipients. The program should include links with the public, private and voluntary sectors.

a. *Priority for Low Income Women (1504(a), PHS Act)* Cooperative agreements may not be awarded under section 1501 of the PHS Act unless the state involved agrees that low-income women will be given priority in the provision of services and activities pursuant to subsections 1501(a)(1) and (2), PHS Act.

b. *Statewide Provision of Services (1504(c), PHS Act)* Cooperative agreement funds may not be awarded under section 1501, PHS Act, unless the state involved agrees that services and acitivities under the grant will be made available throughout the state, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act).

CDC may waive the requirement for Statewide Provision of Services if it is determined that compliance by the state with the requirement would result in an inefficient allocation of resources with respect to carrying out the purpose described in section 1501(a), PHS Act.

c. *Relationship to Items and Services Under Other Programs (1504(d), PHS Act)* Cooperative agreement funds will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such items or services:

(1) Under any state compensation program, under an insurance policy, under any Federal or state health benefits program; or

(2) By any entity that provides health services on a prepaid basis.

(d) *Limitation of Imposition of Fees for Services (1504(b), PHS Act)* If charges are to be imposed for the provision of services or activities under the cooperative agreement, such charges:

(1) Will be according to guidelines described in the interim final rule (42 CFR 405.534) of the Federal Register, Vol. 55, No. 251, December 31, 1990, pages 53510–53525, inclusive, which implements section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), which provides limited coverage for screening mammography services;

(2) Will be made according to a schedule of charges that is made available to the public;

(3) will be adjusted to reflect the income of the woman involved;

(4) State poverty guidelines are to be used in establishing income eligibility requirements; and

(5) Will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

e. *Screening Services Guidelines (1503(a), PHS Act)* For those women who meet the above criteria, screening services can be made available according to the following guidelines:

(1) Only women age 40 or older will be eligible for screening mammography;

(2) Screening will include a physical examination and mammography according to the National Cancer Institute (NCI) guidelines and the American Cancer Society (ACS) guidelines for women age 40 and older;

(3) All women who are, or who have been sexually active, or who have reached the age of 18, should have an annual Pap test and pelvic examination; and

(4) After a woman has had three or more consecutive satisfactory normal annual examinations, the Pap test may be performed less frequently at the discretion of the physician.

f. *Coordination With Other Breast and Cervical Cancer Programs (1504(e), PHS Act)* Cooperative agreement funds may not be awarded unless the state agrees that the services and activities funded through the cooperative agreement shall be coordinated with other Federal, state, or local breast and cervical cancer activities.

2. Follow-Up

Providing follow-up and continuity of care is an essential component of any comprehensive breast and cervical cancer control program. A system must be in place to assure appropriate referrals, tracking, follow-up and treatment for those women who receive screening services through this program and whose screening tests are interpreted as abnormal or suspicious (1501(a)(2), PHS Act). For purposes of follow-up, cooperative agreement funds may be expended for the public health tracking system and for the following services using the same eligibility requirements outlined in section 1, Screening, (above):

a. Cervical cancer—repeat Pap smears, colposcopy and colposcopy-directed biopsy; and/or

b. Breast cancer—repeat mammography and diagnostic mammography.

3. Public Education

Public education includes the systematic design and sustained delivery of a combination of methods which will contribute to the early detection and control of breast and cervical cancer. Successful public education programs are those that influence knowledge, attitudes and practices related to breast and cervical cancer screening in target populations. (1501(a)(3), PHS Act)

4. Professional Education

Health care providers play a central role in assuring that women are screened at appropriate intervals, that the screening tests are performed optimally and that women with abnormal test results receive appropriate diagnostic follow-up and treatment. A health care provider education program, which effectively transmits information on the efficacy and appropriate use of screening procedures, must inform providers and demonstrate an influence on practice, including an improved level of test interpretation and diagnostic and therapeutic follow-up for abnormal results. (1501(a)(4), PHS Act)

5. Quality Assurance

Quality assurance is necessary to ensure that screening tests are performed optimally (1501(a)(5), PHS Act). Include a description of the existing quality assurance program or the program that will be developed.

a. *Breast*—(1) *Use of Improved Screening Procedures (1503(b), PHS Act).* Cooperative agreement funds may not be awarded under section 1501 of

the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(A) of the PHS Act (i.e. physical examination of the breasts and mammography) becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening for Breast Cancer (1503(c), PHS Act).* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act, unless the state involved agrees that the state will assure the quality of any screening procedure for breast cancer conducted pursuant to such section and, in the case of mammography, will provide that:

(a) The equipment used to perform the mammography will be specifically designed for mammography and will meet appropriate radiologic standards for mammography such as those of the American College of Radiology;

(b) The mammography will be performed by an individual who is licensed by the state to perform radiological procedures or is certified as qualified to perform radiological procedures by the American Registry of Radiologic Technicologists or their equivalent;

(c) The results of the mammography will be interpreted by a physician who is certified as qualified to interpret radiological procedures by the American Board of Radiology or the American Osteopathic Board of Radiology or is certified as qualified to interpret screening mammography procedures by an appropriate program for assuring the qualifications of the individual with respect to such interpretations; and

(d) With respect to the first screening mammography performed on a woman for which payment is made pursuant to Section 1501(a), PHS Act, there are satisfactory assurances that the results of the mammography will be placed in permanent medical records maintained with respect to the woman.

b. *Cervix*—(1) *Use of Improved Screening Procedures (1503(b), PHS Act).* Cooperative agreement funds may not be awarded under Section 1501 of the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(B) of the PHS Act (i.e. pelvic examination and Pap smear) becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening For Cervical Cancer (1503(d), PHS Act).* Cooperative agreement funds may not be awarded unless the state involved agrees that the state will assure the quality of any screening procedure for cervical cancer conducted pursuant to such section and, in the case of the Pap smear (or other cytological screening procedure replacing the Pap smear pursuant to section 1503(b) of the PHS Act) will provide:

(a) The maximum number of cytology slides that any individual may screen in a 24-hour period;

(b) Requirements that a clinical laboratory maintain a record of the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory and the number of hours devoted during each 24-hour period to screening cytology slides by such individual;

(c) Criteria for requiring rescreening of cytological preparations, such as random rescreening of cytology specimens determined to be in the benign category; focused rescreening of such preparations in high risk groups; and for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available;

(d) Periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions;

(e) Procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides;

(f) Requirements that all cytological screening be done on the premises of an appropriately qualified laboratory;

(g) Requirements for the retention of cytology slides by laboratories for appropriate periods of time; and

(h) Requirements of periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

Guidelines With Respect To Quality of Mammography and Cytological Services (1503(e), PHS Act). The Department of Health and Human Services (DHHS) will be establishing guidelines for assuring the quality of any mammography and cytological screening procedure conducted pursuant to section 1501(a) of the PHS Act. Such guidelines with respect to mammography will include the provisions of subsections 1503 (c)(1) through (c)(4) of the PHS Act and such guidelines with respect to cytological screening procedures will include the provisions of subsections 1503 (d)(1) through (d)(8) of the PHS Act.

Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that the state will, with respect to any mammography or cytological screening procedure conducted pursuant to such section, ensure that the procedure is conducted in accordance with guidelines issued by DHHS.

With respect to circumstances in which a state receives a grant under Section 1501, PHS Act, before the issuance of the DHHS guidelines, the absence of such guidelines will not affect (1) the obligation of the state pursuant to Section 1501(a)(1) to provide for screening procedures and referrals or (2) the obligations under section 1503(c) and (d) with respect to providing for quality in the screening procedures.

6. Surveillance

Monitoring the distribution and the determinants of breast and cervical cancer incidence and mortality is necessary to evaluate a comprehensive cancer control program (1501(a)(6), PHS Act). To do this, a surveillance system should include:

a. Collection of information on incidence, staging at diagnosis and mortality from breast and cervical cancers;

b. Identification of segments of the population at higher risk for disease and for failure to be screened;

c. Identification of factors contributing to the disease burden, such as behavioral risk factors and limited or inequitable access to early detection and treatment services;

d. Establishment of a surveillance system to monitor the number and characteristics of women screened and outcomes of screenings;

e. Monitoring of screening resources, including the number of mammography facilities, cytology laboratories and providers of cytology screening; and

f. Design and implementation of case studies and other epidemiologic investigations to determine factors associated with avoidable morbidity and mortality.

7. Evaluation

Attention should be given to the design and development of individual components to ensure that there can be

meaningful evaluation. The evaluation plan should assess the implementation and effectiveness of intervention components, including:

a. Screening;
b. Follow-up;
c. Public education;
d. Professional education;
e. Quality assurance; and
f. Surveillance.

At a minimum, the evaluation plan should include the following:

a. A description of the evaluation plan and how evauation results will be used; and

b. A description of methods to assess the implementation of program activities, changes in the program and changes in participant and provider behavior.

8. Breast and Cervical Cancer Control Plan and Coalition. A comprehensive breast and cervical cancer control program should include the following:

a. A state-level cancer control coalition which includes representation from key private, voluntary (e.g., American Cancer Society) and public cancer organizations, the state "Healthy People 2000" coalition (should such a coalition exist in the state), and consumers;

b. Goals and objectives to address breast and cervical cancer control;

c. Proposed strategies to meet those objectives; and

d. Assessment of existing and needed resources to implement the comprehensive breast and cervical cancer control program.

B. CDC Activities

CDC and other recipients financially assisted by CDC will collaborate with the state health agencies in developing the components of their comprehensive breast and cervical cancer control program to include the five following activities:

1. Convene recipients for regular information-sharing and training;
2. Collaborate in the design and implementation of program activities;
3. Collaborate in the development of surveillance and data systems and in the state's analysis and evaluation of these data systems;
4. Collaborate in the devleopment of public and professional education components; and
5. Collaborate in the development of quality assurance programs for mammography and cervical cytology.

Evaluation Criteria

The initial application will be reviewed and evaluated based upon the following weighted criteria:

1. The level of coordinated support and participation from community and voluntary agencies, professional health care organizations and providers toward integrating program elements into the health care delivery system for the at-risk population; (10 points)
2. The extent to which the applicant describes the breast and cervical cancer program needs of the target population, justifies the focus on these populations and the assurance of appropriate screening, follow-up and treatment services; (10 points)
3. The consistency of the specific and time-related measurable objectives with the stated purpose of the cooperative agreement; (10 points)
4. The qualifications and appropriateness of proposed personnel; (10 points)
5. The quality of the public education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)
6. The quality of the professional education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)
7. The quality of the mammography and cervical cytology quality assurance plan; (10 points)
8. The quality of the surveillance plan, demonstrated ability to analyze data and evidence of the continued existence of data sources; (10 points)
9. The documentation and appropriateness of the proposed or existing cancer plan and the role of the coalition in proposed activities; (10 points)
10. The quality of the applicant's evaluation plan; (10 points) and
11. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not Weighted)

Use of Cooperative Agreement Funds

A. Cooperative agreement funds shall be used to establish a public health response to prevent unnecessary breast and cervical mortality including:

1. Assuring screening of women for breast and cervical cancer as a preventive health measure;
2. Assuring appropriate referrals for follow-up services for women with abnormal screening tests;
3. Developing and disseminating public education programs for the early detection and control of breast and cervical cancer;
4. Improving the education, training and skills of health professionals (including allied health professionals) in the early detection and control of breast and cervical cancer;
5. Establishing mechanisms through which the states can monitor the quality of breast and cervical cancer screening procedures in the state, including the interpretation of such procedures;
6. Evaluating program activities through appropriate surveillance and monitoring.

(1501(a), PHS Act)

B. Initially, and throughout the period of the cooperative agreement, at least 60 percent of the cooperative agreement funds are to be expended for services as described in Items 1 and 2 of this section. These services must be initiated upon receipt of funds. Developmental work for Items 3 through 6 (not more than 40 percent) must also be initiated upon receipt of funding and be fully operational by the end of the second year. (1503(a), PHS Act)

C. The state must ensure that no more than 10 percent of cooperative agreement funds will be expended for annual administrative costs. A state may not use in excess of 10 percent of amounts expended under the cooperative agreement for administrative functions. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate. (1504(f), PHS Act)

D. Cooperative agreement funds shall not be used for treatment or treatment services.

Recipient Financial Participation

This program requires the state to make available non-Federal contributions in cash or in kind toward such cost in an amount equal to not less than $1 for each $3 of Federal funds provided. Such contributions may be made directly or through donations from public or private entities, including the payment for treatment services or the donation of treatment services as a result of state-based breast and cervical cancer control screening efforts. Funds provided or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions. For purposes of determining the amount of non-Federal contributions, states may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the state for the 2-year period preceding the first fiscal year for which the state is applying to receive a cooperative agreement for a comprehensive breast and cervical cancer control program. In making a determination of the amount of non-Federal contributions for purposes of matching fund requirements,

applicants may include any non-Federal amounts expended pursuant to Title XIX of the Social Security Act for the purpose of screening and follow-up for women at risk for breast and cervical cancer. (1502, PHS Act)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This Order sets up a system for state and local review of proposed Federal assistance applications. Applicants [other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.919.

Other Requirements

Recipients of Cooperative Agreements must agree to:

(1) Establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the state under such section; and

(2) Upon request, provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the state of the grant.

Recipients of Cooperative Agreements must agree to submit the following reports:

(1) Quarterly status reports on project activities, accomplishments and difficulties are to be submitted to CDC within 30 days after the end of each quarter.

(2) Annual financial status reports must be submitted no later than 90 days after the end of each budget period.

(3) Final financial status and program summary reports are required no later than 90 days after the end of the project period.

Projects involving the collection of information from 10 or more individuals and funded by a cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 must be submitted to Candice Nowicki, Grants Management Office, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305 on or before May 17, 1991. Applications will be considered to meet the deadline if they are received at the above address on or before the stated deadline date or if they bear a postmark of May 17, 1991, and are received in time for submission to the independent review group. Applications should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

Applications which do meet the above criteria will be considered late applications, will not be considered in the current competitive cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures application package and business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305, telephone (404) 842–6508 of FTS 236–6508.

Programmatic technical assistance may be obtained from Duke Bell, Cancer Prevention and Control Branch, Division of Chronic Disease Control and Community Intervention, Mailstop K52, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 488–5483 or FTS 236–5483.

Please refer to Program Announcement Number 122 when requesting information and submitting any application in response to this Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: May 1, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–10863 Filed 5–7–91; 8:45 am]

BILLING CODE 4160–18–M

Biomolecular Markers of Chronic Joint Trauma; NIOSH Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting:

Name: Biomolecular Markers of Chronic Joint Trauma.

Time and Date: 9:30 a.m.–2:30 p.m., June 5, 1991.

Place: Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol for a study to identify biomarkers of degenerative joint disease. The meeting will include discussions on the applicability of this research to the development of methods for future epidemiology studies of workers at risk for occupationally related chronic joint trauma.

Contact Person for Additional Information: J. Patrick Mastin, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–26, Cincinnati, Ohio 45226, telephone 513/533–8399 or FTS 684–8399.

Dated: May 2, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–10869 Filed 5–7–91; 8:45 am]

BILLING CODE 4160–19–M

Control Technology for Small Businesses: Autobody Repair and Painting Shops; NIOSH Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting:

Name: Control Technology for Small Businesses: Autobody Repair and Painting Shops.

Time and Date: 9 a.m.–1 p.m., June 6, 1991.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a NIOSH project entitled "Control Technology for Small Businesses: Autobody Repair and Painting Shops." This project concerns an evaluation of engineering

controls for air contaminants which are generated during autobody repair.

Contact Person for Additional Information: William A. Heitbrink, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-5, Cincinnati, Ohio 45226, telephone 513/841-4376 or FTS 684-4376.

Dated: May 2, 1991.

Elvin Hilyer

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-10870 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-19-M

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and Date: 8:30 a.m.-5 p.m., June 3, 1991, 8:30 a.m.-1 p.m., June 4, 1991.

Place: Auditorium A, Building 2, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The Committee will discuss draft recommendations for statements on DTP, hepatitis, and smallpox/vaccinia; measles; cholera; and meningococcal vaccines and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Specialist, CDC (1-B46), 1600 Clifton Road, NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639-3851 or FTS 236-3851.

Dated: May 2, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-10868 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85F-0469]

General Electric Co.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by General Electric Co. to provide for the safe use of polycarbonate resins produced by the condensation of 4,4'-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride used in contact with food. The previous filing notice is amended to designate the product of condensation of the reactants as a polyestercarbonate rather than a polycarbonate and to propose the establishment of a new food additive regulation.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-473-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 29, 1985 (50 FR 43795), FDA announced that a petition (FAP 5B3898) had been filed by General Electric Co., Pittsfield, MA 01201, proposing that § 177.1580 *Polycarbonate resins* (21 CFR 177.1580) be amended to provide for the safe use of polycarbonate resins produced by the condensation of 4,4'-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride for use in contact with food. Upon review of the chemistry of the condensation reaction and the properties of the product, a tetramer, it has been concluded that the new copolymer is a polyestercarbonate rather than a polycarbonate. Therefore, it is proposed to establish a new food additive regulation rather than to amend § 177.1580, as was originally proposed in the previous filing notice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 26, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-10930 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0134]

Study of the State and Local Laws Relevant to Food Labeling; Public Meeting; National Academy of Sciences

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Committee on State Food Labeling of the National Academy of Sciences (NAS), Institute of Medicine, Food and Nutrition Board (the committee) will hold a public meeting to solicit information and comments pertaining to current State and local laws and regulations relevant to food labeling. Pursuant to section 6(b) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (the 1990 amendments), under contract with FDA, the committee is conducting a study: (1) Of State and local laws that require the labeling of food that is of the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the Federal Food, Drug, and Cosmetic Act (the act), and (2) of those sections of the act and of the regulations issued by the Secretary to enforce those sections, to determine whether the sections and regulations adequately implement the purposes of those sections. The committee is also seeking any available information on the background to the development of the State and local statutes.

In order to consider all relevant information and comments in completing the study, the committee is requesting that all relevant information and comments be submitted before the public meeting announced herein.

DATES: The public meeting will be held on Thursday, May 30, 1991, at 10 a.m. Requests to make oral presentations at the public meeting must be submitted in writing and received by May 15, 1991. Written information and comments should be submitted by May 30, 1991.

ADDRESSES: The meeting will be held at the National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC. Registration for the meeting is free and no pre-registration is required. Attendees are asked to register at the Constitution Ave. entrance (parking will not be available). Written requests, to make oral presentations of information at the public meeting, and written information and comments must be submitted both to Donna V. Porter (**ADDRESSES** below), and to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Two copies of the written information must be submitted to each office.

FOR FURTHER INFORMATION CONTACT: Donna V. Porter, National Academy of Sciences, 2101 Constitution Ave. SW., Washington, DC 20418, (202) 707-7034

or

John Vanderveen, Center for Food Safety and Applied Nutrition (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 245–1064.

SUPPLEMENTARY INFORMATION: In order to carry out the mandate of section 6(b) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535), the Secretary of Health and Human Services, through FDA, has entered into a contract with NAS under which the committee is conducting a study: (1) Of State and local laws that require the labeling of food that is of the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the act (21 U.S.C. 343(b), 343(d), 343(f), 343(h), 343(i)(1), and 343(k)), and (2) of those sections of the act and of the regulations issued by the Secretary to enforce those sections to determine whether the sections and regulations adequately implement the purposes of the sections. The committee is also seeking any available information on the background to the development of the State and local statutes.

In order to consider all relevant information in completing its study, the committee is announcing a public meeting to be held at NAS on May 30, 1991. The purpose of the public meeting is to discuss any information and comments relevant to the study. The committee is, therefore, requesting that all information to be presented at the public meeting, be submitted in writing (**ADDRESSES** above) by May 15, 1991. The committee is also requesting that all other relevant information and comments be submitted in writing to the same **ADDRESSES** by the date of the public meeting, May 30, 1991. Two copies of each submission must be sent to each of the offices listed above.

The Institute of Medicine was unable to schedule this public meeting before the May 8, 1991 deadline imposed by the 1990 amendments because of unforeseen circumstances. However, both the agency and the Institute of Medicine agreed with suggestions that a public meeting would contribute to the value of the study. Consequently, completion of the study report cannot be accomplished by the May 8, 1991 deadline imposed by the act. This delay is not expected to affect the publication of a proposed list of sections which are adequately being implemented by regulations, as required under section 6(b)(3)(A) of the 1990 amendments by August 8, 1991.

Dated: May 2, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–10873 Filed 5–7–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–970–01–4120–14–241A; ALES 43165]

Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Coal Lease Application ALES 43165; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Public Hearing and Comment Period.

SUMMARY: The Bureau of Land Management inadvertently omitted the following lands in the April 8, 1991 (56 FR 14271) Notice of Public Hearing and Comment Period:

Tuscaloosa County, Alabama

T. 17 S., R. 9 W., Huntsville Meridian,
Sec. 17, E2.

This in no other way affects the contents of the original notice and the acreage remains the same.

Denise P. Meridith,

State Director.

[FR Doc. 91–10910 Filed 5–7–91; 8:45 am]

BILLING CODE 4310–GJ–M

[CA–060–01–5440–10 ZBAF]

Proposed State of California Indemnity Selection Subsequent Low-Level Radioactive Waste Facility, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final EIS/EIR.

SUMMARY: The Bureau of Land Management and the California Department of Health Services have prepared a joint final EIS/EIR for the proposed State of California indemnity selection for 1,000 acres and issuance of a right-of-way. Upon conveyance to the State of California, the land is proposed as a site for low-level radioactive waste disposal, which will be licensed by the State of California for 30 years. The facility would involve about 90 acres. The proposed facility is located at Ward Valley, about 23 miles west of the City of Needles, San Bernardino County, and would accept contaminated tools, clothing, waste paper and other products of nuclear medicine, power plants, and other generators of low-level radioactive waste from California, Arizona, North Dakota and South Dakota. The facility would be operated by the proposed licensee, U.S. Ecology, Inc. The alternatives assessed in the final EIS/EIR were an alternative site at Silurian Valley and No Action. The final EIS/EIR addresses impacts on wildlife, including the desert tortoise, visual resources, vegetation, Native Americans, cultural resources, hydrology and environmental health and safety.

DATES: Public comment period is open until June 3, 1991. Comments received after that date may not be considered in the Record of Decision.

ADDRESSES: Written comments may be sent to: District Manager, Desert District, Bureau of Land Management, Attn: LLRW, 6221 Box Springs Blvd., Riverside, CA 92507.

Dated: April 29, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91–10925 Filed 5–7–91; 8:45 am]

BILLING CODE 4310–40–M

[UT–020–01–4341–02]

Salt Lake District; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Salt Lake District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463, that a meeting of the Salt Lake District Advisory Council will be held on June 10, 1991, beginning at 9 a.m. at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah.

The agenda will include an update of multiple use of public lands in the Salt Lake District along with discussion regarding wild horse management, expanding Box Elder County elk herds; and a Rich County riparian update. Also the Council will tour Stansbury Island where private landowners have been experiencing property damage by the public that access adjacent BLM lands. The meeting will adjourn at 4:30 p.m.

Anyone whom would like to make a statement to the Council must notify the District Manager, 2370 South 2300 West, Salt Lake City, UT 84119, or (801) 977–4313 before 4:30 p.m. on June 7th, 1991. A time limit will be established per person by the District Manager.

Dated: April 29, 1991.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91-10926 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-920-01-4212-14; AZA-23855]

Arizona; Conveyance of Public Land in Yavapai County

April 9, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given to the conveyance of public land to Charles J. Day.

FOR FURTHER INFORMATION CONTACT: Mary Jo Yoas, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713, 1719), Charles J. Day has purchased by competitive sale for $25,102.00 the following described land:

Gila and Salt River Meridian, Arizona

T. 8N., R. 5W.,
Sec. 15 NE¼NE¼NW¼.

The area described contains ten acres in Yavapai County, Arizona.

The purpose of this notice is to inform the public and interested States and local government officials of the transfer of this land out of Federal ownership.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 91-10894 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

North Carolina Environmental Sciences Review Panel; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The North Carolina Environmental Sciences Review Panel will meet from 8:30 a.m. to 5 p.m. on Thursday and Friday, May 23-24, 1991 at the Guest Quarters, 2515 Meridian Parkway, Durham, North Carolina. The agenda will include the following:

Status of Report Sections
Physical Oceanography
Ecology/Normal Operations
Ecology/Offshore Accidental Situations
Ecology/Near and Onshore Accidental Situations
Socioeconomics

The meeting is open to the public. Upon request, interested parties may make oral or written presentations related to the purpose of the Panel. Requests should be made to Dr. Andrew Robertson, Federal Coordinator, 301-443-8933.

Dated: May 3, 1991.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 91-10866 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-474 and 475 (Final)]

Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-474 and 475 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) and Taiwan of chrome-plated lug nuts,[1] provided for in subheading 7318.16.00 of the Harmonized Tariff Schedule of United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207), subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-252-1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of chrome-plated lug nuts from China and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigations were requested in petitions filed on November 1, 1990, by Consolidated International Automotive, Inc., Los Angeles, CA.

Participation in the investigations and public service list.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and address of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on June 14, 1991, and a public version will be

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[1] For purposes of these investigations, chrome-plated lug nuts include one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than 1 1/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least ¾ inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to updated and/or unassembled chrome-plated lug nuts. The subject merchandise is used and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Chrome-plated lock nuts, and lug nuts plated with other substances, are not included in these investigations.

issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 27, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 21, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 25, 1991, at the U.S. International Trade Commission Building. Testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is June 24, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 5, 1991; witness testimony must be filed no later than (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 5, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with § 201.16(c) and 207.3 of the rules, each document filed by the party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: April 29, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10914 Filed 5-7-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-41 (Final)]

Gray Portland Cement and Cement Clinker From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured [3] by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 15, 1990, following a preliminary determination by the Department of Commerce that imports of gray portland cement and cement clinker from Japan were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. 1673b(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 28, 1990 (55 FR 49435). The hearing was held in Washington, DC, on March 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 29, 1991. The views of the Commission are contained in USITC Publication 2376 (April 1991), entitled "Gray Portland Cement and Cement Clinker from Japan: Determination of the Commission in Investigation No. 731-TA-461 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: April 30, 1991.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10913 Filed 5-7-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-483 (Final)]

Certain Personal Word Processors From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations No. 731-TA-483 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain personal word processors,[1] provided for in subheadings 8469.10.00 and 8473.10.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192),

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acting Chairman Brunsdale dissenting.

[3] Commissioner Lodwick and Commissioner Newquist determine that a domestic industry is materially injured by reason of the subject imports. Commissioner Rohr determines that a domestic industry is threatened with material injury by reason of the subject imports. Commissioner Rohr further determines, pursuant to section 735(b)(4), that he would have found material injury but for the suspension of liquidation of entries of the subject merchandise.

[1] For a comprehensive description of the merchandise subject to this investigation, see *e.g.*, International Trade Administration, *Preliminmary Determination of Sales at Less Than Fair Value: Personal Word Processors from Japan*, (56 FR 16296, Apr. 22, 1991).

Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain personal word processors from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on November 6, 1990, by Smith Corona Corp., New Canaan, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on June 21, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 10, 1991 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 26, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 1, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the International Trade Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is July 3, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. Witness testimony must be filed no later than three (3) days before the hearing; the deadline for filing posthearing briefs is July 18, 1991. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 18, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–10915 Filed 5–7–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–303]

Certain Polymer Geogrid Products and Processes Therefor; Decision To Lift Suspension and Resume Investigation; Administrative Deadline for Completion of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to lift the suspension of the above-captioned investigation and resume its investigation effective May 6, 1991. The Commission has set an administrative deadline of August 22, 1991, for completion of the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202–252–1104. Hearing-impaired individual's are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On August 10, 1989, The Tensar Corporation, filed a complaint under section 337 alleging infringement of two U.S. patents exclusively licensed to Tensar covering polymer geogrid products and a process for making them. The Commission instituted an investigation of the complaint and issued a notice of investigation which was published in the **Federal Register** on September 20, 1989 (54 FR 38752). On July 11, 1990, the Commission determined not to review an initial determination (ID) designating the investigation "more complicated" and extending the statutory deadline for completion of the investigation by six months.

On September 20, 1990, the presiding administrative law judge issued an ID finding no violation of section 337 in the investigation. On October 4, 1990, in response to a joint request by complainant and respondents, the Commission suspended its investigation in order to allow the private parties to borrow exhibits from the Commission's record for use in a jury trial in concurrent district court litigation between the same parties, *Tenax Corp.* v. *The Tensar Corp.* Civil Action No. H–89–424, in the U.S. District Court for the District of Maryland. 55 FR 41394 (October 11, 1990).

On November 23, 1990, the jury trial concluded with a verdict of patent

infringement in favor of Tensar. The parties returned the exhibits to the Commission on December 19, 1990. Since several post-trial motions were pending before the district court, the Commission determined, on December 31, 1990, to continue its suspension until the final judgment of the district court. 56 FR 873–874 (Jan. 9, 1991). On April 16, 1991, the district court issued a final judgment in the litigation.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202–252–1000.

This action is taken under the authority of section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1) and Commission interim rule § 210.59 (19 CFR 210.59).

Issued: May 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–10917 Filed 5–7–91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–325]

Certain Static Random Access Memories and Integrated Circuit Devices Containing Same, Processes For Making Same, Components Thereof, and Products Containing Same; Commission Determination not to Review an Initial Determination Amending Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) amending the complaint in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1098.

SUPPLEMENTARY INFORMATION: On March 27, 1991, complainant SGS-Thomson Microelectronics, Inc. filed a motion to amend the complaint in the investigation. The amendment identifies an additional licensee under the patents at issue. On April 2, 1991, the Commission investigative attorneys filed a response indicating no opposition to the motion. Respondents took no position on the motion. On April 5, 1991, the presiding ALJ issued an ID (Order No. 4) amending the complaint. No petitions for review or agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C 1337, and Commission interim rule § 210.53(h). 19 CFR 210.53(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street SW, Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 101–252–1810.

Issued: May 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–10918 Filed 5–7–91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub–No. 382X)]

CSX Transportation, Inc.—Abandonment Exemption—in Kanawha and Fayette Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exemption Abandonments* to abandon its 23.16-mile line of railroad between milepost 0.0, at Paint Creek Junction, and milepost 22.12, at Kingston, including the 1.04-mile Imperial Branch (between milepost 0.0, at Imperial Junction, and the end of the branch line at milepost 1.04), in Kanawha and Fayette Counties, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 7, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 20, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 28, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab inito*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 13, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 1, 1991

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–10794 Filed 5–7–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31861]

Garden City Co-Op, Inc.; Corporate Family Transaction Exemption; Garden City Western Railway Co. and Garden City Northern Railway Co.

The Garden City Co-op, Inc. (Co-Op), a noncarrier, has filed a notice of exemption for a corporate family transaction merging The Garden City Northern Railway Co. (GCN) into the Garden City Western Railway Co. (GCW). The merger is expected to be consummated on September 1, 1991.

Both GCN and GCW are wholly owned subsidairies of Co-Op.[1] GCN operates approximately 30.59 miles of rail line in Finney and Scott Counties, KS. GCW operates a 14.5-mile line of railroad in Finney County, KS. GCN and GCW connect with each other, and individual with The Atchison, Topeka and Santa Fe Railway Company, at Garden City, KS.

This is a tranaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect bookkeeping efficiencies.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary P. March, 5725 S.W. 27th Street, Topeka, KS 66614.

[1] Co-Op's acquisition of GCW was exempted in Finance Docket No. 30091, and its acquisition of GCN and control of both GCW and GCN was exempted in Finance Docket Nos. 31502 and 31503 respectively.

Decided: May 2, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–10920 Filed 5–7–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31867]

Joppa and Eastern Railroad Co.; Trackage Rights Exemption; Missouri Pacific Railroad Co.

Missouri Pacific Railroad Company has agreed to grant local trackage rights to Joppa and Eastern Railroad Company (J&E) over its approximately 2.5-mile line between milepost 359.5 and the end of the line at approximately milepost 362.0, north of Joppa, in Massac County, IL.[1] The trackage rights were to become effective on or after April 29, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Beverly S. Greer, 1416 Dodge Street, Room 830, Omaha, NE 68179; and John R. Molm, Troutman, Sanders, Lockerman and Ashmore, 1400 Candler Building, 127 Peachtree Street, NE., Atlanta, GA 30303–1810.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 2, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–10921 Filed 5–7–91; 8:45 am]

BILLING CODE 7035–01–M

[1] The trackage rights agreement is an interim arrangement that would allow J&E to provide service over the line pending Commission approval of its lease of the line in Finance Docket No. 31656.

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Committee on Apprenticeship; Reestablishment

Notice is hereby given that after consultation with the General Services Administration, it has been determined that the Federal Committee on Apprenticeship (FCA) whose charter expired December 2, 1990, is hereby reestablished for a period of two years. This action is necessary and in the public interest.

The Committee will be an effective instrument for providing assistance through advice and counsel to the Secretary of Labor and the Assistant Secretary of Labor for Employment and Training in their development and implementation of administration policies addressing a review of the apprenticeship training concept to determine its proper and most effective role in meeting future skilled training needs.

The apprenticeship program, in this country, is a highly structured program with applications primarily in the manufacturing and building trades. It is a long-term training program designed to produce multi-skilled, journey level workers.

The Department plans to preserve traditional apprenticeship, but will make improvements to the program and the way the apprenticeship system operates to ensure that it meets the needs of the industries it serves. The FCA will be primarily responsible for advising the Department on how best to proceed with its plans for strengthening the current apprenticeship system.

The Committee will consist of 26 individuals: Eight representatives of employers, eight representatives of labor, and ten representatives of the public.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the reestablishment of the Federal Committee on Apprenticeship. Such comments should be addressed to: Mr. Minor R. Miller, Executive Director, Federal Committee on Apprenticeship, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., room N–4649, Washington, DC 20210.

Signed at Washington, DC, this 3rd day of May 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–10896 Filed 5–7–91; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program: Extended Benefits; New Extended Benefit Period in the State and West Virginia

This notice announces the beginning of a new Extended Benefit Period in the State of West Virginia, effective on April 14, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an entended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on March 30, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on April 14, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on May 1, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-10895 Filed 5-7-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-39]

Establishment of the Earth Observing System (EOS); Engineering Review Advisory Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Establishment.

SUMMARY: Pursuant to sections 9 (a) and (c) of the Federal Advisory Committee Act, Public Law 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration (NASA) has determined that establishment of the Earth Observing System (EOS) Engineering Review Advisory Committee is in the public interest in connection with the performance of duties imposed upon NASA by law.

ADDRESSES: National Aeronautics and Space Administration, Code SPS, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Pine, Code SPS, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1630.

SUPPLEMENTARY INFORMATION: The Administrator of the National Aeronautics and Space Administration (NASA), in consultation with the Office of Management and Budget, the National Space Council, and the Office of Science and Technology Policy, has determined that it is appropriate for NASA to establish the Earth Observing System (EOS) Engineering Review Advisory Committee to provide guidance on the implementation of the Earth Observing System (EOS) Program. The Committee will advise the NASA Administrator on possible alternatives for the implementation of the EOS Program, including the size of spacecraft, instrument configuration, and launch requirements and sequencing. The Committee is chaired by Dr. Edward Frieman and is composed of 8 members, selected from a cross section of qualified individuals with an extensive knowledge of global change science and/or the execution of spacecraft hardware and remote sensing instruments.

Dated: May 6, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-11094 Filed 5-7-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Combustion Engineering, Inc., Receipt of Application for Construction Permit and Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from Combustion Engineering, Inc. dated March 30, 1989, as supplemented August 21, 1989, April 26, July 12, October 29, 1990 and March 4, 1991, filed pursuant to section 103 of the Atomic Energy Act, as amended, for the design certification pursuant to 10 CFR part 52 of the System 80+ Standardized Nuclear Power Plant. A notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification including provisions for participation of the public and other parties will be published in the future.

A copy of the application is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2110 L Street,

NW., Washington, DC. Previous correspondence on this application is filed under project number 675 and docket number 50–470. The new docket established for this application is 52–002.

Dated: at Rockville, Maryland this 1st day of May 1991.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director Standardization Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–10885 Filed 5–7–91; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Advance notice of revisions to an existing system of records.

SUMMARY: The purpose of this document is to publish, as required by 5 U.S.C. 552a(e)(11), advance notice of modifications to Privacy Act system of records USPS 120.140, Personnel Records—Employee Assistance Program (EAP) Records. This document proposes to expand the population of the individuals and to modify the types of records covered by the system by limiting the records in this system to only those records collected and maintained as a result of program participation. After a review of the types of records maintained in this system, it was determined that records collected and maintained as a result of filling an EAP counselor position are maintained in Privacy Act systems of records 120.151 on non postal applicants and 120.180 on postal applicants. Also, other minor related corrections and revisions have been made to system 120.140.

EFFECTIVE DATE: The proposed notice will be effective without further notice on June 7, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments may be mailed to:

Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–5010

or delivered to Room 8141 at the above address between 8:15 a.m., and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8141.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, Records Office, (202) 268–4872.

SUPPLEMENTARY INFORMATION: The Employee Assistance Program is expanding its services to offer referral information to immediate family members of employees. A family member's alcohol and/or drug abuse problems often impact negatively on an employee's job performance and personal life. Referral of the family member to a community resource is a means of helping the affected employee. Other than certain demographic data, only information concerning the referral is maintained. The Postal Service does not receive progress or other information about the referral. Demographic data is also maintained about employee program participants. This data is collected for purposes of managing the program and is used to provide statistical reports without personal identifiers.

As provided by 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views or arguments on this proposal. Prior to publication of this proposal, a report describing the proposed changes has been filed with Congress and the Office of Management and Budget for their evaluation. A waiver of the 60-day advance period, pursuant to OMB Circular A–130, has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that the system changes will become effective as proposed following the expiration of the 30-day comment period.

The most recent description of USPS 120.140 appears at 54 FR 43652, dated October 26, 1989. That description is modified as shown in italics below:

USPS 120.140

SYSTEM NAME:

Personnel Records—Employee Assistance Program (EAP) Records, 120.140.

SYSTEM LOCATION:

EAP Offices, *Headquarters, the Minneapolis Postal Data Center and certain contractor sites.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees *and immediate family members* who volunteer for or are referred to the Program which is established primarily to help postal employees in their efforts to recover from alcohol, drug abuse *and other problems which may adversely impact their personal lives, job behavior or performance.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee *participant,* personal information needed to assist in a program of recovery, information about referral, *problem,* progress and participation (number of counselling contacts and leave usage while a Program participant), *name of referred family member and name of community resource where referred. Demographic data collected on records subjects for statistical reporting includes marital status, ethnic group, gender, and age group.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To provide counselors with information needed to *maintain program operations* and counsel individuals under the Program. Also, used as a management data source for statistical reporting on the Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, magnetic tape/disk and computer printouts.

RETRIEVABILITY:

Name, *Social Security Number* or case number of participants.

SAFEGUARDS:

These restricted files are maintained in *locked* file cabinets with access limited to EAP personnel and in secured facilities. Automated records are protected through computer password security and encoding of personal identifiers.

RETENTION AND DISPOSAL:

a. Historical Case Record Cards—Destroy 25 years from the close of case to which card corresponds.

b. Case Files—(1) Deceased persons—*Destroy 1 year from date of cutoff;* (2) *Persons successfully completing the Program* and persons dropped from the Program for reasons of termination, retirement, withdrawal *or transfer*—Destroy *3* years from date of cutoff; (3) *Family member—Destroy 1 year from date of interview.*

Do not transfer to a federal records center.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters USPS, APMG, Employee Relations Department, 475

L'Enfant Plaza SW., Washington DC 20260–4200.

NOTIFICATION PROCEDURE:

Participants in the Program should address inquiries to the head of the facility where participating. Inquiries should contain full name, *Social Security Number*, and location of employment, *if applicable.* Headquarters employees should submit request to the System Manager.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

The participating employee, *family member referee*, EAP counselor and the referring source.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–10927 Filed 5–7–91; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records; Claimants Under Federal Tort Claims Act and Data Automation Program Records and Employees' Compensation Records

The Department of Transportation herewith publishes a notice relating to the proposed amendment of three systems of records maintained in connection with Claimants Under Federal Tort Claims Act, Data Automation Program records, and Employees' Compensation Records. Emergency Operating Records (Vital Records), DOT/SLS 155, is deleted from the Corporation's Systems of Records since it no longer exists.

Any person or agency may submit written comments on the proposed amendment of the systems to Edward Margosian, SLSDC Privacy Act Coordinator, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662–0520. Comments to be considered must be received by May 29, 1991.

If no comments are received, the proposed changes will become effective on the above-mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, April 19, 1991.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

Dot/SLS 151

SYSTEM NAME:

Claimants Under Federal Tort Claims Act.

SYSTEM LOCATION:

Office of the Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., room 5424, Washington, DC 20590

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals presenting claims for damages to personal property, or personal injuries, or death resulting in connection with Corporation activities, other than claims by Federal Government employees under the Federal Employees' Compensation Act (5 U.S.C. 8102).

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim documents on which are recorded name, address, age and marital status of claimants and details of claims, documented evidence relevant to the claims provided by claimants, and relevant, internal Corporation investigation documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following routine uses apply:

- Used by Chief Counsel and others to determine allowability of claims.
- Used as reference material.
- See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible only to the Chief Counsel and his secretary and persons specifically authorized by either.

RETENTION AND DISPOSAL:

Records are retained indefinitely since they are not extensive and are used for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, NW., Room 5424, Washington, DC 20590

NOTIFICATION PROCEDURE:

An individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to: Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026–4090

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the following: Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662–0520

RECORD SOURCE CATEGORIES:

Information is obtained directly from claimants on Standard Form 95 and supporting documentation provided by claimants and relevant, internal Corporation investigation documents

DOT/SLS 152

SYSTEM NAME:

Data Automation Program Records.

SYSTEM LOCATION:

Office of Finance and Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662–0520

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and leave records, work measurement records, and travel vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses apply:

- Payroll and voucher disbursement: GAO audits.
- See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" (collecting on behalf of the U.S. Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape reels, diskettes, microfilm cassettes and supporting documents.

RETRIEVABILITY:

Records are retrievable by social security number and name.

SAFEGUARDS:

Records are kept in locked file cabinets or locked rooms accessible to appropriate supervisor, his/her immediate assistants and secretary.

RETENTION AND DISPOSAL:

Records are retained in accordance with GAO and GSA schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662–0520

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURE:

An individual may gain access to his/her records by written request to the system manager.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from employees, personnel records, and consultants.

DOT/SLS 153

SYSTEM NAME:

Employees' Compensation Records

SYSTEM LOCATION:

Office of Human Resources, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662–0520

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim forms on which are recorded employees' personal statistics and medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following routine uses apply:

- For determining allowability of claims.
- Used as reference material.
- See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and microfilm cassettes.

RETRIEVABILITY:

Records are retrievable by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible to cognizant Personnel Officers.

RETENTION AND DISPOSAL:

Retained indefinitely for possible future use.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer, Office of Human Resources, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662–0520.

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to the system manager.

CONTESTING RECORD PROCEDURES:

Contest of these procedures will be directed to the following: Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662–0520.

RECORD SOURCE CATEGORIES:

Injured employees, witnesses, supervisors, hospitals, and physicians.

DOT/SLS 155

SYSTEM NAME:

Emergency Operating Records (Vital Records).

The system is deleted.

Appendix I—Saint Lawrence Seaway Development Corporation

1. *Introduction.* This appendix, with respect to the Saint Lawrence Seaway Development Corporation:

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying:*

a. Place and time for records inspection and copying—Claimants Under Federal Tort Claims Act: Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC 20590 (9:00 a.m. to 4:00 p.m.). Data Automation Program Records and Employees' Compensation Records: Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662–0520 (9:00 a.m. to 4:00 p.m.).

b. Systems of records located at each facility—Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC. 20590: Claimants Under Federal Tort Claims Act. Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662–0520: Data Automation Program Records and Employees' Compensation Records.

c. Official having authority to deny requests for disclosure of records under this part: Associate Administrator, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662–0520.

3. *Systems of Records.* A complete listing of the systems of records maintained by the Saint Lawrence Seaway Development Corporation was published in the Federal Register, Privacy Act Issuances, 1989 Compilation, Volume II, pages 605–607.

4. *Access to Records.* Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such record, shall make a request in writing to the address provided in Section 2 of this appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

5. *Requests to Correct or Alter a Record:*

a. Any person who desires to have his or her own record corrected shall submit a written request.

b. Only the individual to whom the record pertains may make the written request and it shall be signed by that person.

c. Request should state the reasons that the record should be corrected and that the request is made pursuant to the Privacy Act; alternatively the requester may mark "Privacy Act Amendment Request" on the envelope in which the request is submitted.

d. Requests for correction of records shall be submitted to the Personnel Officer, Office of Human Resources, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662–0520.

6. *Personal Identification Requirements.* Refer to § 10.35 for normal requirements. In those cases involving mail requests for sensitive records, e.g., medical records, the requester's signature shall be notarized.

Narrative Statement for the Department of Transportation, Saint Lawrence Seaway Development Corporation

EXPLANATION OF CHANGE:

The Department of Transportation, on behalf of the Saint Lawrence Seaway Development Corporation, proposes to amend three existing systems of records: Claimants Under Federal Tort Claims Act, DOT/SLS 151; Data Automation Program Records, DOT/SLS 152; and Employees' Compensation Records, DOT/SLS 153. DOT also proposes to delete Emergency Operating Records (Vital Records), DOT/SLS 155, since the system no longer exists.

PURPOSE OF SYSTEM:

DOT/SLS 151 contains statements regarding claims against the Corporation. This information is maintained in connection with Claimants Under the Federal Tort Claims Act. DOT/SLS 152 contains payroll and leave records, work measurement records, travel vouchers, and claim forms. DOT/SLS 153 contains information on employees' personal statistics and medical records. The purpose of this notice is to amend the three systems by changing the system location for DOT/SLS 151 from Massena, New York to Washington, DC, expanding descriptive information about DOT/SLS 151, and making minor changes to the title of system manager, street address, etc., in the two remaining systems of records. Minor changes are also being made to appendix I to incorporate those changes.

AUTHORITY UNDER WHICH THE SYSTEM IS MAINTAINED:

The authority to maintain these three systems of records is contained in 5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

EFFECT ON INDIVIDUAL RIGHTS:

Most of the information in the system is either provided voluntarily by individuals employed at the Saint Lawrence Seaway Development Corporation or by people who are involved in tort actions. The information will be used in accordance with the stated routine uses and will not unduly impact on individual privacy rights.

RELATIONSHIP TO GOVERNMENT AGENCIES:

The information in these systems will be provided to appropriate Federal, State, local or foreign governments in accordance with the stated routine uses and Prefatory Statement of General Routine Uses.

SECURITY:

All records are maintained in a secured work area limited to those persons whose duties require access. Computer processing of information requires operation numbers and individual passwords. A description of the steps taken to safeguard these records is given under the appropriate heading in each system notice.

COMPATIBILITY OF ROUTINE USES WITH THE PURPOSES FOR WHICH THE RECORDS WERE COLLECTED:

The routine uses are compatible with the purposes for which the information was collected.

OMB CONTROL NUMBER:

OMB 80–R111, Claim for Damages, Injury, or Death (Standard Form 95), applies to DOT/SLS 151.

[FR Doc. 91–10850 Filed 5–7–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 30, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0351.
Form Number: 3975.
Type of Review: Revision.
Title: Tax Practitioner Annual Mailing List Application and Order Blank.
Description: Form 3975 allows a practitioner a systematic way to remain on the mailing file (TPMF) and to order copies of tax forms materials.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 415,000.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,325 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–10842 Filed 5–7–91; 8:45 am]

BILLING CODE 4830–01–M

[No. 15–12]

Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms to Investigate Violations of 18 U.S.C. 1956 and 1957; Directive

May 1, 1991.

1. Purpose. This directive delegates to the Director, Bureau of Alcohol, Tobacco and Firearms (ATF) authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. Delegation. By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e) and 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by Treasury Order 101–05, there is hereby delegated to the Director, ATF:

a. Investigatory authority over violations of 18 U.S.C. 1956 or 1957 involving 18 U.S.C. 2341–2346 (trafficking in contraband cigarettes); Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (relating to the importation of items on the U.S. Munitions Import List, except violations relating to exportation, intransit, temporary import, or temporary export transactions); and 18 U.S.C. 1952 (relating to travelling in interstate commerce, with respect to liquor on which Federal excise tax has not been paid); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year imprisonment; and

b. Seizure and forfeiture authority and related authority under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957 within the investigatory jurisdiction

of ATF under paragraph 2.a. above, and seizure authority under 18 U.S.C. 981 relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture remission. The Director, ATF is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, the Director, ATF discovers evidence of a matter within the jurisdiction of another Treasury bureau, the Director, ATF will immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Director, ATF shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus. The Assistant Secretary (Enforcement) will settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the Director, ATF will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15-12, "Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms to Investigate Violations of 18 U.S.C. 1956 and 1957," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-10843 Filed 5-7-91; 8:45 am]

BILLING CODE 4810-25-M

[No. 15-29]

Delegation of Authority to the Commissioner, United States Customs Service To Investigate Violations of 18 U.S.C. 1956 and 1957; Directive

May 1, 1991.

1. *Purpose.* This directive delegates to the Commissioner, United States Customs Service authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e) and 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by Treasury Order 101-05, there is hereby delegated to the Commissioner, United States Customs Service:

a. Investigatory authority over violations of 18 U.S.C. 1956 or 1957 involving 18 U.S.C. 542, 545, 549, 659, 1461-63, 1465, 2251-52, 2314, and 2321; 19 U.S.C. 1590; 21 U.S.C. 857; offenses under section 11 of the Export Administration Act of 1979 (50 U.S.C. App. Section 2410); offenses under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705); offenses under section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16); and offenses under section 38 of the Arms Export Control Act (22 U.S.C. 2778) (relating to the exportation, intransit, temporary import, or temporary export transactions);

b. Investigatory authority over violations of 18 U.S.C. 1956(a)(2)(B)(ii), involving a reporting violation under 31 U.S.C. 5316;

c. Investigatory authority over violations of 18 U.S.C. 1956(a)(3) relating to violations within the investigatory jurisdiction of the Customs Service under paragraphs 2.a. and b.; and

d. Seizure and forfeiture authority and related authority under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957 within the investigatory jurisdiction of the Customs Service under paragraphs 2.a., 2.b., and 2.c., and seizure authority under 18 U.S.C. 981 relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture Remission. The Commissioner, United States Customs Service is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.d.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, the U.S. Customs Service discovers evidence of a matter within the jurisdiction of another Treasury bureau or office, the U.S. Customs Service will immediately notify that bureau of office with investigatory jurisdiction of the investigation and invite that bureau or office to participate in the investigation. The Commissioner, U.S. Customs Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level or in the case of the Office of Foreign Assets Control, at the headquarters level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus. The Assistant Secretary (Enforcement) will settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the U.S. Customs Service will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15-29, "Delegation of Authority to the Commissioner, United States Customs Service to Investigate Violations of 18 U.S.C. 1956 and 1957," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-10844 Filed 5-7-91; 8:45 am]

BILLING CODE 4810-25-M

[No. 15-42]

Delegation of Authority to the Commissioner, Internal Revenue Service To Perform Functions Under the Money Laundering Control Act of 1986, as Amended; Directive

May 1, 199..

1. Purpose. This directive delegates to the Commissioner, Internal Revenue

Service (IRS) investigatory, seizure and forfeiture authority under the Money Laundering Control Act of 1986, Public Law 99–570, subtitle H (October 27, 1986), as amended.

2. Delegation. By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e), 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by the Treasury Order 101–05, there is hereby delegated to the Commissioner, IRS:

a. Investigatory authority over violations of 18 U.S.C. 1956 and 1957 where the underlying conduct is subject to investigation under title 26 or under the Bank Secrecy Act, as amended, 31 U.S.C. 5311–5326 (other than violations of 31 U.S.C. 5316);

b. Seizure and forfeiture authority over violations of 18 U.S.C. 981 relating to violations of:

(1) 31 U.S.C. 5313 and 5324; and

(2) 18 U.S.C. 1956 and 1957 which are within the investigatory jurisdiction of IRS pursuant to paragraph 2.a. above; and

c. Seizure authority relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is solely with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture Remission. The Commissioner, IRS is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, IRS discovers evidence of a matter within the jurisdiction of another Treasury bureau, to the extent authorized by law, IRS will immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Commissioner, IRS shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus in consultation with the Commissioner, IRS.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau of the Postal Service, IRS will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15–42, "Delegation of Authority to the Commissioner, Internal Revenue Service to Perform Functions Under the Money Laundering Control Act of 1986, and the Bank Secrecy Act," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–10845 Filed 5–7–91; 8:45 am]

BILLING CODE 4810–25–M

[No. 15–54]

Delegation of Authority to the Director, United States Secret Service To Investigate Violations of 18 U.S.C. 1956 and 1957; Directive

May 1, 1991.

1. Purpose. This directive delegates to the Director, United States Secret Service authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. Delegation. By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e), 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by Treasury Order 101–05, there is hereby delegated to the Director, United States Secret Service:

a. Investigatory authority over violations of 18 U.S.C. 1956 and 1957 involving an offense under 18 U.S.C. 471–473 (counterfeiting of obligations or securities of the United States); 18 U.S.C. 500–503 (counterfeiting of blank or postal money orders, postage stamps, foreign government postage and revenue stamps, and postmarking stamps); 18 U.S.C. 657 (involving theft, embezzlement or misapplication by employees of the Federal Deposit Insurance Corporation); and 18 U.S.C. 1029 (fraud and related activity in connection with access devices); and

b. Seizure and forfeiture authority and related authority under 18 U.S.C. 981 relating to violations of section 1956 or section 1957 within the investigatory jurisdiction of Secret Service under paragraph 2.a. above, and seizure authority under 18 U.S.C. 981 relating to any other violations of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture Remission. The Director, United States Secret Service is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b. above.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, Secret Service discovers evidence of a matter within the jurisdiction of another Treasury bureau, Secret Service will immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. Secret Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus. The Assistant Secretary (Enforcement) will settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, Secret Service will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15–54, "Delegation of Authority to the Director, United States Secret Service to Investigate Violations of 18 U.S.C. 1956 and 1957," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–10846 Filed 5–7–91; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 89
Wednesday, May 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 20496, May 3, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 10:30 a.m., Wednesday, May 8, 1991, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed employee retention incentive guidelines for Federal Reserve System automation consolidation.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11121 Filed 5-6-91; 3:30 pm]

BILLING CODE 6210-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 4:00 p.m. CDT, Saturday, June 1, 1991.

PLACE: Harry S. Truman Library, Independence, MO.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Call to order.
2. Approval of minutes of September 24, 1990 meeting.
3. Report of the Chairman.
   a. Welcome and opening comments.
   b. Report on the 1991 class of Truman Scholars.
4. Report of Executive Secretary.
   a. Activities since last Board meeting.
   b. Presentation on the Truman Scholars Leadership Week.
   c. Presentation on the Truman Scholars Summer Institute.
   d. Financial status of the Truman Scholarship Foundation.
5. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, and conduct other Foundation business.
6. New business.
7. Date, time and place of next Meeting.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Louis H. Blair, Executive Secretary, Telephone: (202) 395-4831.

Louis H. Blair,

Executive Secretary.

[FR Doc. 91-11024 Filed 5-6-91; 1:26 pm]

BILLING CODE 6820-AB-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Tuesday, May 14, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. National Credit Union Share Insurance Fund (NCUSIF) Insurance Premium.
3. Proposed Rule: New Part 709, Liquidation of Federal Credit Unions and Adjudication of Creditor Claims involving Federally Insured Credit Unions in Liquidation, NCUA's Rules and Regulations.
4. Proposed Rule: Part 747, New Subpart A, Uniform Rules of Practice and Procedure and Redesignation of Existing Subparts, NCUA's Rules and Regulations.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, May 14, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Board Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).
3. Reconsideration of Denial of Insurance Coverage. Closed pursuant to exemptions (6), (8), (9)(B), and (10).
4. Appeal of Denial of Insurance. Closed pursuant to exemptions (6), (8), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-11065 Filed 5-6-91; 1:27 pm]

BILLING CODE 7535-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (CDT), Wednesday, May 8, 1991.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Land Between The Lakes, Golden Pond Visitor Center, Golden Pond, Kentucky.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

F—Unclassified

6. Development of Socially/Economically Disadvantaged Businesses

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call 615-632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-479-4412.

Edward S. Christenbury,

General Counsel and Secretary of the Corporation.

[FR Doc. 91-11022 Filed 5-6-91; 10:38 am]

BILLING CODE 8120-08-M

federal register

Wednesday
May 8, 1991

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Air Traffic Operating and Flight Rules: O'Hare International Airport; Jet Aircraft Operation in Commuter Slots; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Authority

14 CFR Part 93

[Docket No. 26339; Notice No. 91-13]

RIN 2120-AE21

Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would amend the regulations pertaining to the allocation and definition of commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at O'Hare International Airport. Through this action, the FAA proposes to permit a limited number of commuter slots at O'Hare International Airport to be used by aircraft having a maximum seating capacity of up to 110 passenger seats. This proposed rule is in response to a petition for rulemaking submitted by American Airlines. The FAA proposes to limit the number of commuter slots available for operation of such aircraft to 25 percent of each operator's commuter slots at O'Hare International Airport, and to limit the number of such operations in any half hour. This change is proposed to remain in effect for a 2-year period to allow the FAA to evaluate the effect of the change on the operation of the airport and air traffic facilities. This action would relieve airlines at O'Hare of certain existing restrictions and permit (but not necessarily result in) additional jet service to some smaller communities while still preserving the class of commuter slots as distinct from air carrier slots.

DATES: Comments must be received on or before June 7, 1991.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, attention: Rules Docket, Docket No. 26339, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the rules docket weekdays, except Federal holidays between 8:30 a.m. and 5 p.m.

FOR FUPTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 telephone (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, energy, reporting, and recordkeeping aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this advance notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26339." Communications received before the specified closing date for comments will be considered before taking any further action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular (AC) No. 11-2, "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

The High Density Traffic Airport Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1969 to reduce delays at five congested airports: JFK International, LaGuardia, O'Hare International, Washington National, and Newark International (at which limits are no longer in effect 33 FR 17896, December 3, 1968). The regulation limits the number of operations at each airport, by hour or half hour, during certain hours of the day. The limits were most recently amended in April 1984 (49 FR 8237, March 6, 1984). While allocations vary from hour to hour, the basic allocation is 120 slots each hour at O'Hare for operations by air carriers, 25 slots each hour for commuter operators, and 10 slots each hour for general aviation. The operating limits are in effect at O'Hare from 6:45 a.m. to 9:15 p.m. The limits on operations by scheduled air carriers and commuter operators are enforced by the allocation of takeoff and landing "slots" to individual operators (14 CFR 93.125: subpart S).

On August 22, 1989, the Department published amendment no. 93-57, a final rule which, among other changes, amended the definitions of "commuter" and "air carrier" aircraft in the High Density Rule (54 FR 34904; corrected 54 FR 37303, September 8, 1989). In response to the comments received and to the petition filed by Air Wisconsin to permit the use of larger propeller-driven aircraft in commuter slots, the FAA redefined commuter operations as those using turboprop or reciprocating aircraft having less than 75 passenger seats. On September 21, 1989, the Department suspended the effectiveness of this amendment to the extent it would prohibit operations by turbojet aircraft with less than 56 seats using commuter slots, to consider information presented by manufacturers currently developing small turbojet aircraft intended for commuter operations (54 FR 39843, September 28, 1989).

As a result, commuter slots currently may be used only with propeller-driven aircraft certificated with a maximum passenger seating capacity of less than 75 and turbojet aircraft with a maximum seating capacity of less than 56. The air carrier/commuter slot distinction was incorporated in the original High Density Airport Traffic Rule adopted in 1969 to protect the regional airline industry and to preserve air service in smaller, "commuter" markets within a short to medium range of the high density airports.

The American Airlines Petition

Summary

On September 6, 1990, American Airlines (AAL) filed a petition for rulemaking to permit the operation of Stage 3 jet aircraft with up to 110 passenger seats in commuter slots at O'Hare Airport. AAL argued that the change would permit it to upgrade service in a number of smaller markets from turboprops to jets. The FAA

published the petition on October 2 with a 60-day comment period (55 FR 40191).

On November 8, 1990, the FAA requested supplemental information and comments concerning certain concerns of the agency that were not addressed in the original petition (55 FR 46956). In particular, Air Traffic Control (ATC) had concerns about the capacity of terminal facilities at O'Hare Airport for the additional turbojet operations that would result if the seat limitation of the commuter aircraft were raised as the petition had requested. Specifically, the FAA requested further comment on gate availability at O'Hare for the additional jet aircraft, and the potential for ground congestion and safety concerns should gates not be available.

In response, to the AAL petition, Canadair filed a separate petition for rulemaking on December 3, 1990, requesting that its petition be consolidated with the AAL petition because of its related subject matter. Specifically, Canadair requested that the definition of "scheduled commuter," as defined in § 93.123(c), be amended to include in the definition of commuter aircraft turbojet aircraft with a maximum seating capacity of less than 56 seats.

Currently, the 435 commuter slots at O'Hare are allocated to three carriers as follows:

American (AMR Eagle, Simmons)	281	(65%)
Air Wisconsin	118	(27%)
Great Lakes	36	(8%)
Total	435	

Comments on the Petition

Approximately 250 comments were received on the petition. Virtually all the supporting comments were based on the assumption that American would provide improved air service to the commenter's community. Most comments came from businesses and individual travelers in Fargo, ND; Peoria and Springfield, IL; Sioux Falls, IA; Madison, WI; Vail, CO; and Allentown, PA; and members of Congress and local government officials representing those cities.

Representatives of several other communities in the Midwest, including members of Congress, opposed the petition because it would act as an incentive to abandon existing turboprop service to small communities that could not support jet service, to permit the carrier to use the slots for jet operations in other markets. Several carriers (United, USAir, Delta, Air Wisconsin, Continental, Pan Am Express) also opposed the petition on grounds of the lack of small community service, the exclusive benefit and windfall to AAL, and the resulting increase in air and ground congestion at O'Hare.

The Suburban O'Hare Commission opposed the petition for the environmental impact on the surrounding communities of increased jet operations and the apparent policy decision to increase the jet capacity of O'Hare. The Chairman of the Commission also questioned whether the addition of a number of larger aircraft at O'Hare would affect the safety of operations in the air and on the ground. Finally, the Commission believes that AAL would determine that jet service to certain smaller communities was not economically beneficial and would discontinue air service to some cities, leaving those cities without air access to O'Hare.

In response to the FAA's request for supplemental information, AAL stated that it now had enough jet gates available each day at O'Hare to handle any increase in operations due to the use of jet aircraft in commuter slots. AAL believes that the number of available gates at O'Hare would act as a natural limit as to the number of operations that could be used by larger turbojet aircraft. Further, AAL stressed that due to the delivery schedule of the larger aircraft, it would not be able to use that many commuter slots with larger turbojet aircraft at this time, because the planes would not all be delivered in the immediate future.

Discussion of Comments

A. *Effect on arrival/departure operations at O'Hare.* Many of the comments in general support of the petition stated that air service to the commenter's community would be improved by the granting of AAL's petition, but typically did not discuss what effect the use of jet aircraft in commuter slots would have on arrival, departure, and ground operations at the airport. Most of the carriers commenting on the petition stated their belief that arrival and departure operations would be detrimentally affected by additional

jet operations using the type of aircraft requested by AAL in its petition.

The FAA continually monitors operating conditions and system performance at the four high density traffic airports, to consider whether an easing of current High Density Rule restrictions is feasible. While the action requested by AAL in its petition has no benefit for ATC, the FAA is willing to consider such a request in the interest of imposing only the minimum level of industry regulation actually necessary for the safe and efficient operation of flight and ground operations at these airports. The agency's consideration is subject to cost-benefit analysis, environmental consideration, and the Office of the Secretary of Transportation's findings relating to service to small communities and effect on competition, as well as safe and efficient operations.

The FAA believes that unrestricted use of commuter slots by air carrier aircraft (as defined in § 93.123(c)(1)) would add greatly to delays and congestion of arrival and departure operations at O'Hare. The FAA is less concerned that a limited number of operations in commuter slots by the smaller jet aircraft described in AAL's petition, i.e., aircraft with a certified maximum seating capacity of 110 seats or less, would result in significant additional delays, if there is no increase in total operations. On the basis of an assessment of current O'Hare operations and delays and considering recent improvements in ATC resources and technical procedures in the Chicago area, the FAA believes that the trial use of turbojet aircraft with a certified maximum seating capacity of 110 or less in a limited number of commuter slots would not have a significant adverse effect on ATC or airport delays at O'Hare, if such operations are further limited during certain peak hours.

For this reason and as described in more detail below, the FAA is proposing to permit carriers holding commuter slots at O'Hare to conduct operations with aircraft having up to 110 passenger seats, with a limitation on the total number of such operations and on the number per half hour per two consecutive half hours. While AAL's petition mentioned only turbojet aircraft, the proposed rule is limited only by seat capacity of aircraft and not by engine type. The FAA requests comments on the expected effect of the resulting jet operations on arrival and departure operations at O'Hare.

B. *Effect on ground operations at O'Hare.* Additional information was solicited from AAL and the public on the availability of gates for the additional jet operations at O'Hare. AAL claims it is not using all of its jet gates now, so that the capacity exists for up to 71 added jet operations a day. Other commenters, especially the responding air carriers and the Suburban O'Hare Commission, stated that larger aircraft would cause severe ground congestion and resultant delays. These commenters questioned whether ATC would be able to handle the increase in the number of larger aircraft.

O'Hare is currently subject to substantial ground congestion. If a gate is not immediately available for an arriving aircraft, that aircraft must hold on the ramp until a gate becomes available. Aircraft waiting on the ramp can block ramp areas and even taxiways, exacerbating congestion and resulting in ground delays and increased complexity of controlling ground operations. To avoid the potential for increased ground congestion as a result of additional operations using terminal jet gates, the FAA is proposing to require that a gate be available for any operation of a commuter slot by an aircraft with up to 110 seats. This condition applies only to jet aircraft, because non-jet aircraft operating under the proposed rule would likely use the same ramp parking as the commuter aircraft they replace. The proposal to limit further the number of additional operations by aircraft of this size in peak hours also should tend to limit the impact of those operations on ground congestion.

c. *Effect on service to small communities.* The majority of support for the petition came from representatives or residents of small and mid-size cities for which AAL has promised additional flights and/or conversion of existing turboprop flights to jet service. Many of the commenters supporting the petition stated, incorrectly, that current FAA rules prevented the initiation or addition of jet service to the commenter's community. In fact, while the High Density Rule limits the number of jet operations by a carrier to the number of air carrier slots held, the rule does not limit a carrier's decision to use a non-international slot

for one market rather than another. (Slots allocated for Essential Air Service (EAS) Program operations may be limited to particular markets, but no air carrier slots are now allocated for EAS operations.) Neither AAL nor any other carrier at O'Hare is limited by FAA regulations from using its domestic air carrier slots to serve any particular market. As of December 15, 1990, AAL held 569 air carrier slots at O'Hare. Of that number, 21 were leased to Simmons Airlines and operated with turboprop aircraft with less than 56 seats, and approximately 30 were not used at all but were kept above the 65 percent slot use requirement by rotational assignment of slot numbers. Accordingly, in recent months AAL has held more than 50 air carrier slots which are not used for jet operations. As a result, AAL (and other carriers) could at that time have provided much or all of the jet service requested by commenters, with no change in regulations and no cancellation of jet service in other markets.

Several other communities and carriers stated that they believed that AAL's requested change would actually hurt smaller communities. Air Wisconsin, for instance, stated that in the current air service market, smaller communities would not receive upgraded air service, but would in fact probably have their service cut, because it may not be economically advantageous to operate the larger jet service to or from the smaller communities. The representative from Coles County Airport Authority located in Mattoon, Illinois, essentially agreed with this assessment, and suggested that the FAA review AAL's past commitments and practices in regard to the smaller communities. (Records of the Department of Transportation Office of Aviation Analysis indicate that AAL's subsidiary commuter operators have suspended O'Hare service to eight Essential Air Service points since June 1989.) The representative stated that he believed that, regardless of AAL's promises, the smaller communities would lose their air service.

The Department of Transportation believes that all communities should have access to the air transportation system. The Department ensures that Essential Air Service is provided to eligible points and supports the availability of air service to other small communities. At the same time, the Department recognizes that the greatest utility of the finite capacity of such high density airports as O'Hare may favor the use of larger aircraft in higher density markets. In order to balance the interests of economic efficiency, on the one hand, and the Department of Transportation's interest in preserving feeder service to smaller markets in the Chicago region, on the other, the FAA proposes to cap the number of commuter slots that can be operated with 110-seat aircraft at 25 percent of the commuter slots held by each commuter operator at O'Hare. This will tend to preserve the category of commuter slots and mitigate the impact on commuter markets generally. Also, the 2-year limit proposed in this notice will serve to enable the Department to assess air service impacts as well as operational effects.

In the formulation of this proposal, the Department is relying heavily on assurances by AAL in its petition and comments that the use of turbojet aircraft in commuter slots will not reduce the quality of air service to smaller communities. If this proposal is made effective, the Department will closely monitor the use of commuter slots at O'Hare in order to evaluate whether AAL's actions are consistent with its representations in the petition. Should the use of commuter slots under such a rule fail to maintain service to smaller communities in the region, the Department will reevaluate the use of turbojet aircraft in commuter slots.

D. *Environmental review.* Even though commuter slot operations by 56- to 110-seat aircraft would not add to total operations at O'Hare, the proposal would substitute jets for turboprops in a certain number of operations. (While the proposed rule would permit *any* aircraft with 56 to 110 passenger seats to be used in commuter slots, the FAA presumes that carriers will choose to operate turbojets.) AAL represents that all of the new jet operations by AAL would use small Stage 3 jets, specifically Fokker 100's. However, the rule change requested by AAL permits carriers now operating small jets in air carrier slots to move those flights into commuter slots, freeing the slots for large jet operations. (Air Wisconsin currently operates 44 flights each day with 110-passenger jets in air carrier slots). Also, the FAA has not limited jet use to Stage 3 aircraft, in recognition of the agency's current rulemaking proposing to adopt a schedule for the phase-out of stage 2 aircraft operations throughout the United States by 1999 (56 FR 8628, February 28, 1991).

Regulations of the Council on Environmental Quality provide for initiation of environmental review of agency actions at the earliest possible time in the agency decisionmaking process. In view of the public and industry requests for expeditious consideration of the proposed rule, and the fact that the agency currently has no information on the potential impacts of the proposal, the issuance of this notice has not been delayed for completion of environmental review. However, the FAA requests comments on the potential environmental effects, if any, of the proposed rule.

The Proposal

For the above mentioned reasons, the FAA proposes to amend FAR part 93, subpart K and subpart S, (1) to clarify that the definition of commuter aircraft under the High Density Rule includes turbojet aircraft having a maximum passenger seating capacity of less than 56 seats, and (2) to permit the temporary operation of jets (or other aircraft) with a maximum passenger seating capacity of 56 to and including 110 in certain commuter slots at O'Hare International Airport, subject to specific conditions. First, the FAA would limit the maximum number of commuter slots that could be operated with air carrier aircraft under the proposed rule to 25 percent of the total number of commuter slots held by each slot holder at O'Hare. The cap would limit potential effects on airport operations and preserve at least 75 percent of existing commuter slots for small community service. No matter which carriers held or operated commuter slots, no more than 25 percent of the total number of commuter slots at O'Hare could be used for larger aircraft.

AAL stated that the lack of unlimited gates at O'Hare and the delivery schedule of the Fokker 100 aircraft would limit the extent of the use of jets in commuter slots, with the implication that no further restriction was necessary. However, AAL admitted that the lack of larger aircraft would only serve as a limiting factor temporarily. Also, other carriers may not be so limited. For these reasons, the FAA is concerned that the market conditions and apparent gate availability would not serve as an effective limit on the number of commuter slots that would be used by larger aircraft. A limit of 25 percent of all commuter slots minimizes potential ground and flight congestion, and preserves the segment of operations that typically provide air service to smaller communities in the Chicago region. The FAA notes that 25 percent of AAL's 281 commuter slots is 70, which corresponds almost exactly with the number of jet gates that AAL represents it has available throughout the day at O'Hare for additional operations of Fokker 100 aircraft.

The second condition is that the number of commuter slots that could be used for operation of aircraft with 56 or more seats would be limited to a maximum number each half hour (beginning at 0645) and each two consecutive half hours. During most hours of the day, the limit would be a total of six in each half hour (beginning at 0645) and a total of 10 in any two consecutive half hours. In peak traffic hours the operations would be limited to two per half hour. This limitation would serve to distribute such operations throughout the day and prevent the scheduling of a too great a number of such operations in any one hour or half hour to be handled without significantly adding to airport delays. Full utilization of the authority, with this limitation on half-hour and consecutive half-hour operations, would permit a total of 108 new jet operations a day at O'Hare (with a like reduction in the number of turboprop operations).

The peak hours in which the limitation to two per half hour would apply are: 1015 through 1244, 1715 through 1944. O'Hare Airport, and airspace sectors in the Chicago region, are highly congested at the above times. This congestion often results in operating delays, and O'Hare currently experiences one of the highest levels of operating delays of any airport in the United States. The impact of the additional jet operations is not only the airport itself, but also on high altitude airspace handled by Chicago Center. The added jet operations would use altitudes higher than those used by turboprop aircraft. At certain times of day the en route airspace structure in the Chicago region is highly congested with through traffic as well as arrivals and departures to and from Chicago airports. The FAA believes that it is important to limit the addition of jet operations during those times of day, to avoid unacceptable operating delays for the traveling public and an unacceptable increase in ATC workload at what are already times of peak activity. The limitations per half hour and consecutive half hours on the number of 56- to 110-seat turbojet operations in commuter slots would be published in an appendix to part 93. A decision by ATC to amend these limits would be published in advance of the effective date of the change, in the Federal Register, as an amendment to the part 93 appendix.

Third, a carrier would be required to notify ATC 60 days in advance of the planned operation of a commuter slot with a 56- to 110-seat aircraft. ATC would have the authority to disapprove a request based on actual conditions at the time of the request, and also to grant a request with conditions such as operating only as an arrival or departure. ATC's approval, conditional approval, or disapproval would be issued more than 45 calendar days before the planned start date stated in the notice. ATC approval for a specific operation would be valid for 30 days after the planned start date, and then would expire if the operation had not commenced. If requests exceed the six or fewer commuter slots available for 56- to 110-seat aircraft operation in a half hour, the notice would be approved on a first-come first-served basis (based on proposed start date, not date of notice); however, a first-time notice would receive precedence over a refiling of an expired notice, to prevent carriers from "locking up" the six available slots long before intended operation. The FAA requests comments on whether the "first-come, first-served" provision, as proposed, would provide all affected operators equitable access to the use of commuter slots under the proposed rule.

Fourth, the FAA would require that any carrier intending to operate a commuter slot with a 56- to 110-seat jet aircraft have sufficient gates available for those operations, to prevent ramp and taxiway congestion which could result from additional jet operations.

Finally, the FAA believes that there is a need to limit the proposed amendment to a 2-year period in order to evaluate the impact on airport operations, especially delays, and on ATC resources and workload. At the end of 2 years, existing operations under this provision could be extended pending a study of impacts and rulemaking to revise, expand, or curtail the program. Within the 2-year period, AAL or any other holder of commuter slots at O'Hare could petition the FAA for rulemaking to modify the program to increase the number of turbojet aircraft permitted to use commuter slots or for any other adjustment. ATC would evaluate the request on the basis of actual experience to determine the predicted effect of the request on airport operations and the air traffic control system.

The proposed action represents a grant of the petition for rulemaking filed by Canadair, Inc., on December 3, 1990, and a partial grant of the petition for rulemaking filed by American Airlines on September 6, 1990.

Regulatory Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives.

Costs

This proposal is voluntary and would not impose any additional costs on part 121 operators. This rule would allow them to use some of their commuter slots (up to 25 percent) at O'Hare Airport for operations involving aircraft having up to 110 seats. A maximum of 108 operations per day using aircraft with up to 110 seats would be permitted to be used in commuter slots under this proposal. The number of commuter slots that could be used for these operations would also be limited to 6 in any half-hour slot period and 10 during any two consecutive half hours, except in certain peak hours when such operations would be limited to 2 per half hour.

As a result of the above limitations on the use of larger aircraft in commuter slots, the FAA believes that the proposal would not significantly alter the operating environment at O'Hare Airport for scheduled parts 135 or 121 air carrier operators. It is not expected that ground operations and departure and arrival procedures would be significantly affected. However, there might be some minor delays in enroute operations in the Great Lakes Region. The FAA solicits comments from the public regarding the impact that this proposal would have on operations at O'Hare Airport and in the Chicago region.

This proposed regulation would have no effect on the safety of either air or ground operations. ATC would retain the ability to delay arrival or departure of additional large airplane operations at O'Hare Airport in order to maintain safety.

In this evaluation, the FAA assumes that service to small airports would not

be reduced as a result of this proposal. This proposal would allow air carrier operators to substitute larger and faster turbojet airplanes for smaller and slower turboprop airplanes and, thereby, improve service to the small airports that they currently serve. However, the FAA recognizes that the ability to use jets in commuter slots may serve as an incentive to remove those slots from use in markets that cannot support jet service, and the FAA solicits public comment regarding this assumption.

Benefits

This proposal benefit some of the passengers who fly to and from Chicago on any portion of their trip. As a result of this proposal, passengers on long commuter flights would be able to fly in larger and faster turbojet airplanes which would save them some time. For most commuter flights, which are short, turbojets would not provide any significant time savings. The FAA estimates that about 20 minutes could be saved on a long commuter flight by using turbojet airplanes instead of turboprop airplanes. The FAA estimates that approximately 50 passengers would be on each turbojet commuter flight. The estimated passenger time saved is, therefore, 16.7 passenger-hours per commuter flight. The FAA estimates that the value of passenger time is $34 per hour. Allowing turbojet airplanes with up to 110 seats to be used on long commuter flights would save $568 in passenger time per trip. This proposed regulation would allow 108 commuter slots to be used in this way. Thus, this proposal would save as much as $61,300 per day in passenger time if all 108 commuter slots are converted to turbojet commuter flights. The FAA solicits public comment regarding the assumptions used in estimating the benefits of this proposal.

Benefit Cost Comparison

The FAA finds that in the absence of significant delays, there would be no significant costs to this proposed regulation. However, there are measurable benefits. As a result, the FAA has determined that the proposed regulation would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities". The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has any significant economic impact on a substantial number of small entities.

The FAA defines a small entity as an operator who owns, but does not necessarily operate, nine airplanes. A substantial number of small entities is one-third of the small entities provided 11 or more small entities are substantially impacted. The FAA defines a significant economic impact as $4,000 per year for unscheduled operators, $57,000 per year for scheduled operators, and $101,000 per year for schedule operators whose fleets are entirely composed of aircraft with 60 or more passenger seats.

There are no small operators providing service to Chicago O'Hare Airport that have airplanes with 56 to 110 seats. Thus, the FAA determines that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Statement

The proposed regulation would only affect domestic operations at Chicago O'Hare Airport. Thus, it would not provide either an advantage or disadvantage to foreign air carriers providing service to and from the United States, nor would it provide either a trade advantage or disadvantage to US air carriers providing foreign service.

Paperwork Reduction Act

This proposal, if adopted, provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provision of subpart S. OMB Approval Number 2120–0524 has been assigned to subpart S.

Federalism Determination

The proposal set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation, if adopted, would not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this proposal (1) would not be a "major rule" under Executive Order 12291; and (2) would be a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, I certify that under the criteria of the Regulatory Flexibility Act, this proposal would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, I propose to amend part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983); Public Law 101–506.

2. In § 93.123, paragraph (c) is revised to read as follows:

§ 93.123 High density traffic airports.

* * * * *

(c) For purposes of this subpart—

(1) The number of operations allocated to "air carriers except commuters," as used in paragraph (a) of this section refers to the number of operations conducted by air carriers with turboprop and reciprocating engine aircraft having a certificated maximum passenger seating capacity of 75 or more or with turbojet powered aircraft having a certificated maximum passenger seating capacity of 56 or more, or, if used for cargo service in air transportation, with any aircraft having a maximum payload capacity of 18,000 pounds or more.

(2) The number of operations allocated to "scheduled commuters," as used in paragraph (a) of this section, refers to the number of operations conducted by air carriers with turboprop and reciprocating engine aircraft having a certificated maximum passenger seating capacity of less than 75 or by turbojet aircraft having a certificated maximum passenger seating capacity of less than 56, or, if used for cargo service in air transportation, with any aircraft having a maximum payload capacity of less than 18,000 pounds.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, a limited number of operations allocated for "scheduled commuters" under paragraph (a) of this section may be conducted with aircraft described in

§ 93.221(e) of this part pursuant to the requirements of § 93.221(e).

(3) Section 93.221 is amended by adding a new paragraph (e) to read as follows:

§ 93.221 Transfer of slots.

* * * * *

(e) Notwithstanding § 93.123(c)(2) of this part, a commuter slot at O'Hare International Airport may be used with an aircraft described in § 93.123(c)(1) of this part on the following conditions:

(1) Air carrier aircraft that may be operated under this paragraph are limited to aircraft with a maximum certificated passenger seating capacity of 56 to 110 seats.

(2) No more than 25 percent of the total number of commuter slots held by a slot holder at O'Hare International Airport may be used with an aircraft described in paragraph (e)(1) of this section.

(3) An air carrier or commuter operator planning to operate an aircraft described in paragraph (e)(1) in a commuter slot shall notify ATC at least 60 days in advance of the planned start date of such operation. The notice shall include the slot number, proposed time of operation, aircraft type, and planned start date. ATC will approve or disapprove the proposed operation no later than 45 days prior to the planned start date. If an operator does not initiate operation of a commuter slot under this section within 30 days of the planned start date first submitted to the FAA, the ATC approval for that operation will expire. That operator may file a new or revised notice for the same half-hour slot time; however, a first notice of planned operation by another carrier in the same half-hour slot time will receive priority in the event that proposed operations under this section exceed the number approved by ATC.

(4) ATC will not approve a number of operations by aircraft described in paragraph (e)(1) of this section in commuter slots in any half hour (beginning at 0645) or in any two consecutive half hours greater than the number indicated in appendix B to this part. ATC may approve fewer than the number of such operations listed in appendix B for any half hour or two consecutive half hours upon a determination that a greater number would have an adverse effect on airport delays.

(5) An operation may not be conducted under paragraph (e)(1) unless a gate is available for that operation without planned waiting time;

(6) For the purposes of this paragraph (e), notice to ATC shall be submitted in writing to: Director, Air Traffic System Management, ATM–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

(7) The effectiveness of this paragraph (e) shall expire (2 years after the date of the enactment of this section).

4. Appendix B is added to part 93 to read as follows:

Appendix B to Part 93—Limits on the Number of Air Carrier Aircraft that May Be Used in Commuter Slots at O'Hare International Airport

The number of operations by aircraft described in § 93.221(e)(1) of this section in commuter slots at O'Hare International Airport may not exceed the following number indicated for each half-hour slot period and each two consecutive half hours:

Hours	Per half hour	Per 2 consecutive half hours
1015 through 1244	2	4
1715 through 1944	2	4
All other hours between 0645 and 2115	6	10

Issued in Washington, DC., on May 3, 1991.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 91–10888 Filed 5–3–91; 12:57 pm]

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federal register

Wednesday
May 8, 1991

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Request for Input on the Long-Range Plan of the National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Request for Input on the Long-Range Plan of the National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The National Institute on Disability and Rehabilitation Research (NIDRR) is authorized to support research and related activities to improve the lives of individuals with disabilities, and to develop a Long-Range Plan for research on disability and rehabilitation. NIDRR invites interested parties to present comments at a series of public hearings on research and dissemination needs and opportunities during the coming decade in all areas of disability, including but not limited to: full community integration; employment; physical mobility and functioning; independent living and empowerment; vocational rehabilitation services; and knowledge dissemination and utilization. The purpose of the hearings is to obtain ideas from the public on the content and direction of a new NIDRR Long-Range Plan.

NIDRR encourages interested parties to attend a public meeting. Persons desiring to testify or seeking additional information should telephone Jacquie Price at (703) 684–5588; persons who are deaf and hearing impaired can call (202) 732–5136 for TDD services.

MEETING INFORMATION: The public hearings are scheduled to be held from 9 am to 5 pm on.

—May 21, 1991 in Columbia, South Carolina: Laffitte Conference Room, 1410 Boston Ave., South Carolina Vocational Rehabilitation Department, State Office Building, West Columbia, SC 29171–0015.

—May 30, 1991 in Chicago, Illinois: Heyworth Room, 2nd floor of the Rehabilitation Institute of Chicago, 345 E. Superior St., Chicago, IL 60611.

—June 10, 1991 in Boston, Massachusetts: Curtis Auditorium, Room #101, Sargent College of Allied Health Professions, 635 Commonwealth Ave., Boston, MA 02215.

—June 15, 1991 in Houston, Texas: Institute for Rehabilitation and Research, Texas Medical Center, 1333 Moursund St., Houston, TX 77030–3405.

—June 20, 1991 in Seattle, Washington: The HUB (Student Union Building), Room 200ABC, University of Washington, Seattle, WA 98195.

—June 25, in Oakland, California: Oakland Convention Center, room 208, Second Floor, Broadway at Tenth St., Oakland, CA 94704.

COMMENTS: For those who will not be able to attend the public hearings, NIDRR invites written comments. Written comments should be received by July 12, 1991.

ADDRESSES: Written comments should be addressed to Jacquie Price, Walcoff & Associates, 635 Slaters Lane, Suite 102, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should telephone (703) 684–5588; persons who are deaf and hearing impaired can call (202) 732–5136 for TDD services.

Dated: May 2, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–10848 Filed 5–7–91; 8:45 am]

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Federal Register

Wednesday
May 8, 1991

Part IV

Department of Education

Congressional Methodology and the Family Contribution Schedule Methodology for the 1992-93 Award Year; Revision; Notice

DEPARTMENT OF EDUCATION

Pell Grant, Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Stafford Loan Programs; Revision of the Need Analysis Systems for the 1992–93 Award Year

AGENCY: Department of Education.

ACTION: Notice of revision to the Congressional Methodology and the Family Contribution Schedule methodology for the 1992–93 award year.

SUMMARY: The Secretary of Education announces the annual update to tables used in the need analysis methodologies that an institution of higher education must use in calculating expected family contributions for the 1992–93 award year under the Pell Grant, campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant), and Stafford Loan programs. The Secretary takes this action under the authority of title IV of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Radden, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4318, ROB–3), Washington, DC 20202–5444, telephone (202) 708–7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1 (800) 877–8339 (in Washington, DC (202) 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The need analysis methodologies are used to determine student eligibility for assistance under title IV of the Higher Education Act of 1965, as amended (HEA). There are two need analysis methodologies used under the above programs for determining a student's expected family contribution. One methodology, the Family Contribution Schedule, is used to calculate a student's expected family contribution for the Pell Grant Program. In the Pell Grant Program, a student's expected family contribution is known as the Pell Grant Index (PGI), formerly the student Aid Index (SAI). The second methodology, the Congressional methodology, is used to calculate a student's expected family contribution for the campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant) and Stafford Loan programs. Both of these methodologies are established by statute.

The HEA provides for the following annual updates:

I. Pell Grant Family Contribution Schedule

Sections 411A through 411F of the HEA specify the criteria, data elements, calculations, and tables used to calculate expected family contributions for the Pell Grant program. The Secretary is required to publish a revised Family Size Offset table for each award year. The family size offset is an allowance for the family's basic living expenses that varies by family size and is offset against the effective family income.

The Secretary must revise the tables by increasing (or decreasing) the comparable amount for the preceding award year by a percentage equal to the percentage increase (or decrease) in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, and rounded to the nearest $100. Using the percentage change between the Consumer Price Index for Wage Earners and Clerical Workers for December 1989 and the Consumer Price Index for Wage Earners and Clerical Workers for December 1990 as a predictor, the Secretary determines that the family size offsets will increase by 6.1 percent for the 1992–93 award year. Accordingly, for the 1992–93 award year for the Pell Grant Program, the Family Size Offset Table is revised as follows:

FAMILY SIZE OFFSETS

Family members	Amount
1	$6,400
2	8,000
3	9,800
4	12,500
5	14,900
6	16,600

Note: Add $2,000 for each additional family member for families with more than six in the household.

The dependent student offset is an offset against the effective income of a dependent student and his or her spouse. The Secretary is required to publish necessary revisions in these offsets for each award year. The dependent student offsets for the 1992–93 award year are revised as follows:

DEPENDENT STUDENT OFFSETS

Marital Status	Amount
Single	$4,200
Married	6,000

II. Congressional Methodology

Part F of title IV of the HEA specifies the criteria, data elements, calculations, and tables for the computation of expected family contributions, and tables for the computation of expected family contributions for the campus-based and Stafford Loan programs. In addition, part F requires that four of the tables—the Standard Maintenance Allowance, the Adjusted Net Worth of a Business or Farm, the Asset Protection Allowance, and the Assessment Schedules and Rates—be adjusted each award year to take into account inflation for the 12 months between December 31 of the previous year and December 31 of the current year. The changes are based in general, upon increases in the Consumer Price Index.

For award year 1992–93 the Secretary is charged with updating the standard maintenance allowances, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 1990 and December 1991. However, since the Secretary must publish these tables before December 1991, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 1991.

The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 1990 through December 1991 will be 4.6 percent. Therefore, for the 1992–93 award year, the tables set forth in part F have been updated as follows in sections 1, 2, and 4 in accordance with this estimate and the other relevant provisions of part F. The Secretary must revise for each award year the table on asset protection allowance as provided for in section 478(d) of the HEA. The Asset Protection Allowance table for the award year 1992–93 has been updated below in section 3.

Part F also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described below in section 5.

1. Standard Maintenance Allowance

This allowance is the amount of reasonable living expenses that would

be associated with the maintenance of an individual or family. The allowance is offset against income for the family's basic living expenses, and it varies by family size. The standard maintenance allowances for parents of dependent students and independent students with dependents for award year 1992–93 are:

Family size (including student)	Number in college				
	1	2	3	4	5
2	$10,370	$8,600			
3	12,910	11,150	$9,380		
4	15,940	14,180	12,410	$10,640	
5	18,810	17,050	15,280	13,510	$10,500
6	22,010	20,240	18,470	16,700	14,930

For each additional family member add $2,490.
For each additional college student subtract $1,770.

2. Adjusted Net Worth (NW) of a Business or Farm

A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since: (1) The income produced from such assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for dependent students, independent students without dependents, and independent students with dependents.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0.
1 to 75,000	0+40% of NW.
75,001 to 225,000	30,000+50% of NW over 75,000.
225,001 to 370,000	105,000+60% of NW over 225,000.
370,001 or more	192,000+100% of NW over 370,000.

3. Asset Protection Allowance

This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary education expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents, and one for independent students with dependents.

DEPENDENT STUDENTS

If the age of the older parent is	Then the asset protection allowance is—	
	Two parents	One parent
25 or less	0	0
26	2,300	1,700
27	4,500	3,300

DEPENDENT STUDENTS—Continued

If the age of the older parent is	Then the asset protection allowance is—	
	Two parents	One parent
28	6,800	5,000
29	9,000	6,700
30	11,300	8,400
31	13,600	10,000
32	15,800	11,700
33	18,100	13,400
34	20,300	15,100
35	22,600	16,700
36	24,900	18,400
37	27,100	20,100
38	29,400	21,800
39	31,600	23,400
40	33,900	25,100
41	34,800	25,700
42	35,700	26,200
43	36,400	26,800
44	37,300	27,300
45	38,300	28,000
46	39,300	28,700
47	40,300	29,200
48	41,600	29,900
49	42,700	30,600
50	43,800	31,400
51	45,200	32,100
52	46,300	32,900
53	47,800	33,700
54	49,300	34,700
55	50,500	35,500
56	52,100	36,400
57	53,700	37,500
58	55,700	38,300
59	57,400	39,500
60	59,100	40,600
61	61,200	41,700
62	63,400	42,900
63	65,300	44,100
64	67,600	45,400
65 or more	69,900	46,900

INDEPENDENT STUDENTS WITHOUT DEPENDENTS

If the age of the student is—	Then the asset protection allowance is—
25 or less	0
26	1,700
27	3,300
28	5,000
29	6,700
30	8,400

INDEPENDENT STUDENTS WITHOUT DEPENDENTS—Continued

If the age of the student is—	Then the asset protection allowance is—
31	10,000
32	11,700
33	13,400
34	15,100
35	16,700
36	18,400
37	20,100
38	21,800
39	23,400
40	25,100
41	25,700
42	26,200
43	26,800
44	27,300
45	28,000
46	28,700
47	29,200
48	29,900
49	30,600
50	31,400
51	32,100
52	32,900
53	33,700
54	34,700
55	35,500
56	36,400
57	37,500
58	38,300
59	39,500
60	40,600
61	41,700
62	42,900
63	44,100
64	45,400
65 or more	46,900

INDEPENDENT STUDENTS WITH DEPENDENTS

If the age of the student is—	Then the asset protection allowance is—	
	married	unmarried
25 or less	0	0
26	2,300	1,700
27	4,500	3,300
28	6,800	5,000
29	9,000	6,700
30	11,300	8,400
31	13,600	10,000
32	15,800	11,700
33	18,100	13,400

INDEPENDENT STUDENTS WITH DEPENDENTS—Continued

If the age of the student is—	Then the asset protection allowance is—	
	married	unmarried
34	20,300	15,100
35	22,600	16,700
36	24,900	18,400
37	27,100	20,100
38	29,400	21,800
39	31,600	23,400
40	33,900	25,100
41	34,800	25,700
42	35,700	26,200
43	36,400	26,800
44	37,300	27,300
45	38,300	28,000
46	39,300	28,700
47	40,300	29,200
48	41,600	29,900
49	42,700	30,600
50	43,800	31,400
51	45,200	32,100
52	46,300	32,900
53	47,800	33,700
54	49,300	34,700
55	50,500	35,500
56	52,100	36,400
57	53,700	37,500
58	55,700	38,300
59	57,400	39,500
60	59,100	40,600
61	61,200	41,700
62	63,400	42,900
63	65,300	44,100
64	67,600	45,400
65 or more	69,900	46,900

4. Assessment Schedules and Rates

Three separate assessment schedules—one for dependent students, one for independent students without dependents, and one for independent students with dependents—are used to determine the expected contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from an assessment of the parents' adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. For a dependent student, the parents' AAI is assessed according to the following schedule:

If AAI is—	Then the assessment is—
Less than −$3,409	−$750.
−3,409 to 9,300	22% of AAI.
9,301 to 11,600	2,046+25% of AAI over 9,300.
11,601 to 14,000	2,621+29% of AAI over 11,600.
14,001 to 16,300	3,317+34% of AAI over 14,000.
16,301 to 18,700	4,099+40% of AAI over 16,300.
18,701 or more	5,059+47% of AAI over 18,700.

For independent students without dependents the expected family contribution is derived in part from an assessment of the student's available taxable income (ATI). The ATI is based on a calculation of taxable income minus a maintenance allowance and allowances for Federal, State and local income taxes and social security taxes. The assessment of the ATI for an independent student without dependents is computed according to the following schedule:

If AAI is—	Then the assessment is—
Less than $10,600	70% of ATI.
10,601 or more	$7,420+90% of ATI over $10,600.

For independent students with dependents, the expected contribution is derived from an assessment of the adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. The assessment of AAI for an independent student with dependents is computed according to the following schedule:

If AAI is—	Then the assessment is—
Less than—$3,409	−$750.
−3,409 to 9,300	22% of AAI.
9,301 to 11,600	2,046+25% of AAI over $9,300.
11,601 to 14,000	2,621+29% of AAI over 11,600.
14,001 to 16,300	3,317+34% of AAI over 14,000.
16,301 to 18,700	4,099+40% of AAI over 16,300.
18,701 or more	5,059+47% of AAI over 18,700.

5. Employment Expense Allowance

This allowance for employment-related expenses, that is used for the parents of dependent students and independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students and independent students with dependents is the lesser of $2,500 or 35 percent of earned income.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program)

Dated: May 1, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 630

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 86N-0027]

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations governing the manufacture of Poliovirus Vaccine Live Oral. FDA is amending the regulations to make the regulations consistent with current scientific knowledge and to remove unnecessary regulatory burdens. FDA is also amending the regulations to make its standards more consistent with the requirements for manufacturing and testing of oral poliovirus vaccine issued by the World Health Organization (WHO). The amendments will facilitate the licensure for U.S. distribution of oral poliovirus vaccine currently meeting international standards of safety and effectiveness.

DATES: Effective May 8, 1991. Additional written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, by July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In the **Federal Register** of May 5, 1986 (51 FR 16620), FDA issued a proposed rule to revise the additional standards for viral vaccines governing the manufacture of Poliovirus Vaccine Live Oral. Poliovirus Vaccine Live Oral (hereafter referred to as oral poliovirus vaccine) is a preparation of live, attenuated, poliovirus grown either in monkey kidney cell cultures or in a cell line of human or simian (monkey) origin. The trivalent form of the vaccine, containing a combination of the three types of poliovirus that may infect humans, is used in the United States for the immunization of children against paralytic poliomyelitis.

Oral poliovirus vaccine is a biological product subject to licensure under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). Under the PHS Act, oral poliovirus vaccine must meet standards prescribed in regulations designed to ensure the continued safety, purity, and potency of the product. The additional standards for Poliovirus Vaccine Live Oral are currently codified in §§ 630.10 through 630.17 (21 CFR 630.10 through 630.17).

II. Reasons for the Rulemaking

In 1985, FDA undertook a review of the additional standards for oral poliovirus vaccine to determine how the regulations could be revised and updated. As described in the preamble to the proposed rule, FDA had several objectives for its regulatory review and subsequent rulemaking. FDA continues to believe that these objectives, cited below, are appropriate reasons for amending the regulations governing the manufacture of oral poliovirus vaccine.

1. *To update the regulations consistent with current scientific knowledge and the standards of the World Health Organization (WHO).* During the past 29 years, FDA and other health agencies worldwide have gathered considerable information and scientific understanding concerning the manufacture, testing, and use of oral poliovirus vaccine. With this increased scientific knowledge, the world's health agencies have recognized the need to update the standards by which oral poliovirus vaccine is manufactured and tested. Accordingly, FDA and other health agencies cooperated in the development of revised WHO standards concerning the manufacture and testing of any oral poliovirus vaccine. WHO published its revised standards in 1983 ("Requirements for Poliomyelitis Vaccine (Oral) (Requirements for Biological Substances No. 7)", World Health Organization Technical Report Series, No. 687, 1983). Most countries now will accept for domestic use oral poliovirus vaccine manufactured according to WHO standards. FDA has reviewed the revised WHO standards and believes that, for the most part, they are appropriate for ensuring the safety and effectiveness of oral poliovirus vaccine licensed for use in the United States. FDA has also reviewed its standards, independent of the WHO review, to identify areas where the regulations could be updated based on current scientific knowledge.

Accordingly, FDA proposed to revise its additional standards for oral poliovirus vaccine to be more consistent with the WHO standards and also proposed other amendments consistent with the findings of FDA's independent review of the current regulations.

2. *To facilitate the licensure of safe and effective vaccines.* Since 1979, only one manufacturer has remained licensed for Poliovirus Vaccine Live Oral Trivalent. The one manufacturer has consistently met the Nation's needs for oral poliovirus vaccine. FDA recognizes, however, that dependence on a sole source for an essential vaccine leaves immunization programs vulnerable to any of a variety of circumstances that may disrupt vaccine supplies from the sole manufacturer. Occasional minor outbreaks of poliomyelitis occurring in unimmunized populations in the United States and abroad illustrate the need to continue, uninterrupted, immunization of children with oral poliovirus vaccine. Multiple sources of oral poliovirus vaccine would ensure the continuation of immunization programs, even if supplies from one of the manufacturers were temporarily interrupted. Likely candidates for obtaining licensure of oral poliovirus vaccine include those manufacturers who are already supplying safe and effective oral poliovirus vaccines to other countries.

FDA believes that licensure of such vaccines will become feasible only if FDA's standards and international (WHO) standards are reasonably consistent. FDA has found that there are differences between FDA's standards and international standards that do not alter the assurances of safety and effectiveness of the vaccine provided by the standards. However, FDA believes that these differences may deter manufacturers from seeking licensure in the United States of oral poliovirus vaccine currently used safely and effectively in other countries. Accordingly, FDA proposed to amend the additional standards to be more consistent with acceptable international standards so as to facilitate the U.S. licensure of oral poliovirus vaccine from multiple sources.

3. *To reduce the regulatory burdens of the regulations.* Under the Regulatory Flexibility Act (Pub. L. 96-354) and Executive Order 12291, FDA is required to systematically undertake a periodic review of its regulations to identify and appropriately revise or remove unduly burdensome regulations. FDA has systematically reviewed the regulations in §§ 630.10 through 630.17 and proposed

amendments to reduce or remove unduly burdensome regulations while ensuring the continued safety and effectiveness of oral poliovirus vaccine.

4. *To improve the clarity of the regulations.* FDA proposed numerous editorial amendments in the regulations. The editorial amendments are intended to make the regulations more readable, to remove ambiguities in terminology, and to clarify the regulations.

III. The Advisory Committee Meeting of January 1987

Among the comments submitted in response to the proposed rule, FDA received requests from the licensed manufacturer of oral poliovirus vaccine, from several scientists with expertise in vaccine manufacture and use, and from two members of Congress that the proposed rule be presented for consideration by an advisory committee of experts. The comments contended that a meeting with an advisory committee would provide a public forum at which interested persons could present their views regarding the rules and would offer an opportunity for experts to confirm that the proposed amendments will not impair the assurances of safety and effectiveness of oral poliovirus vaccine provided by the regulations. In fact, FDA had discussed the proposed amendments with FDA's Vaccines and Related Biological Products Advisory Committee (the Advisory Committee), on two occasions in sessions closed to the public. However, FDA decided, in light of the public interest in the rulemaking and in response to these requests, to provide an opportunity for public discussion and consideration of the issue at an advisory committee meeting.

In the Federal Register of January 16, 1987 (52 FR 1969), FDA announced a change in agenda of a previously scheduled meeting of the Advisory Committee to provide for public discussion of the proposed rule at a meeting on January 29, 1987. Also in the Federal Register of January 16, 1987 (52 FR 1933), FDA announced that the agency was reopening the comment period on the proposed rule until February 13, 1987. FDA reopened the previous comment period so that all information, including comments received as a result of the Advisory Committee meeting, would be available to the agency in its consideration of the rulemaking.

All interested persons were allowed to present their views to the Advisory Committee at the meeting on January 29, 1987. So that all presentations could be heard, the meeting was extended for a 2-hour session on January 30, 1987. Approximately 1½ hours of the meeting were closed to the public to discuss proprietary information. A transcript of the meeting, excluding the discussion held in closed session, is available under the docket number in the heading of this document, from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

After completion of the public discussion, the Advisory Committee recommended that the final rule be issued as proposed, and that it should include several changes to particular provisions of the proposed regulations, mentioned at the meeting and discussed elsewhere in this preamble. The Advisory Committee issued several suggestions concerning FDA's policies for implementing the final regulations, particularly concerning the revised test for neurovirulence in monkeys, and recommended several areas that would be appropriate for further investigation. A summary of the Advisory Committee's suggestions and FDA's response, including a summary of several studies conducted by FDA in response to specific Advisory Committee suggestions, follows. The data discussed below were presented by FDA at an open meeting of the Advisory Committee on November 17, 1989. Lederle Laboratories also presented data at the same meeting.

1. The Advisory Committee suggested that FDA define and establish a policy for acting on individual extreme results (outliers) obtained in the revised neurovirulence test in monkeys. The Advisory Committee noted that results of the revised test are analyzed by comparing the mean value for neurovirulence of the test virus; therefore, it was possible that the neurovirulence displayed in one or more test monkeys could be extraordinarily high even though the mean values for neurovirulence of the test and reference virus may compare acceptably. The Advisory Committee acknowledged that the cause and significance of isolated extreme values are unknown, but recommended that procedures should be in place to evaluate extreme values if they should occur. The Advisory Committee suggested that the significance of outlier results be evaluated by further study.

FDA believes that extreme outlier scores have not been reproducible upon subsequent testing and are most probably due to the particular susceptibility of an occasional individual monkey to the virus. However, FDA believes that until it can be more definitely demonstrated that the occurrence of individual outlier scores bears no relationship to the relative neurovirulence of the poliovirus some consideration should be given to outlier values. As is discussed in response to comment 28, FDA is providing in § 630.16(b)(3) that each manufacturer must have a means, approved by FDA, for evaluating a neurovirulence test (revised test only) with one or more monkeys having outlier scores. For the purposes of this discussion and the regulations, an outlier score is defined as an individual monkey mean lesion score in a test of a monovalent virus pool that is greater than an individual monkey mean lesion score previously or concurrently associated with the Reference Attenuated Polivirus of the corresponding type.

FDA has developed additional evidence regarding the significance of outlier values. FDA reviewed the results of over 5 years of testing 100 lots of monovalent virus pools of vaccine virus in approximately 1,840 animals. FDA found six vaccine lots with a total of seven individual monkeys with neurovirulence individual scores that were higher than the individual scores previously associated with the homotypic reference preparation. Four of these vaccine lots were available for retesting. Upon retesting, all four lots demonstrated group mean neurovirulence scores well below that of the reference and no outlier values were demonstrated. Thus, the outlier scores initially observed were not reproduced upon subsequent retesting.

During a routine test at FDA using the type 2 poliovirus reference preparation (lot NB–2), one animal developed severe disease symptoms typical of wild poliovirus infection; the remaining animals tested normally. The animal was sacrificed on day 12 post inoculation, the neurovirulence was scored for the animal, and type 2 poliovirus recovered from the animal's tissue was also tested by the revised neurovirulence test in monkeys. The neurovirulence score for the original, severely diseased animal was 3.3. The scores that may be obtained in this test range from 0 to 4, with higher scores indicating greater neurovirulence. The group mean neurovirulence score for the poliovirus recovered from the very severely paralyzed animal upon inoculation into a group of monkeys was 0.86. The reference virus scored at 0.34. Although scoring slightly higher than the reference virus, the virus isolated from the severely paralyzed monkey had much lower neurovirulence scores upon inoculation into another group of animals than the score for the original

monkey from which it was obtained, indicating that it was the one monkey's particular susceptibility to the virus rather than any particular property of the virus itself that resulted in the single extreme neurovirulence score. A similar event occurred when FDA was using the reference for type 1 poliovirus (lot NA4) in a routine test according to the current CFR standards, with scores in a single monkey being between 3 and 4. FDA did not attempt to recover the virus from that monkey.

Both the type 1 reference (NA4) and the type 2 reference (NB–2) are composed of virus from pools that were utilized as components in trivalent vaccine for immunization of children. None of the virus pools used in composing the references was reported to be associated with an increased risk of paralytic poliomyelitis in the field. Both reference preparations have been used extensively in neurovirulence testing, with only the isolated instances noted above in which an extreme neurovirulence score was observed. Accordingly, the virus used in these reference preparations has been proven to be safe in vaccines and to be reliable as reference preparations and the rare instances of outlier scores do not reflect any unusual neurovirulence on the part of the virus. FDA will continue to evaluate the significance of outlier values as they occur.

2. The Advisory Committee suggested that FDA develop a practical policy for limiting the number of reference virus preparations of the same type that may be available for use at any given time.

FDA agrees that the number of references virus preparations in use should be limited. As is discussed in response to comment 15, FDA is including in § 630.14(b) the requirement that only the FDA reference standards and, upon FDA approval, the WHO reference standards, may be used for the required neurovirulence testing.

3. The Advisory Committee suggested studies be initiated to understand better the relationship of the dose of poliovirus administered to monkeys and the resulting values displayed in the neurovirulence test in monkeys. The Advisory Committee agreed that the available data are adequate to support the dosage prescribed in the revised neurovirulence test; however, additional data are needed to determine completely the relationship of dose to response to monkeys as represented by a neurovirulence value.

In response to the Advisory Committee's suggestion, FDA undertook a dose response study using types 1, 2, and 3 vaccine viruses. Five 10-fold dilutions were prepared from each virus type and tested for neurovirulence in monkeys. The undiluted viruses (10^0) were comparable to the inocula used in the previous, CFR-specified test while the 10-fold dilution (10^{-1}) were comparable to the inoculum used in the WHO neurovirulence test. The virus dilutions from 10^0 to 10^{-2} all demonstrated typical neurovirulence in monkeys. For types 2 and 3 viruses, the 10^{-3} dilution also demonstrated typical neurovirulence. For each of the three virus types, the neurovirulence scores for the 10^{-1} dilution were actually slightly higher, both for individual monkeys and total group scores, than the scores of the undiluted (10^0) samples. The data show that there is a wide range of dilutions that will adequately demonstrate neurovirulence in monkeys and that the dilution to be used in the revised test is of adequate sensitivity in detecting neurovirulence.

4. Independent of the adoption of the proposed rule, the Advisory Committee suggested that FDA and vaccine manufacturers continue to study the relevance of the results of the neurovirulence test in monkeys to the incidence of vaccine-related disease in the United States.

FDA continually monitors the incidence of vaccine-associated poliomyelitis in the United States and other countries. Typically, less than 10 cases of vaccine-associated paralytic poliomyelitis are reported in the United States each year. No single vaccine lot has been associated with an increased incidence of poliomyelitis. The lots that have been identified as associated with a case of paralytic poliomyelitis have had typically low scores when tested by FDA and the manufacturer for neurovirulence in monkeys. In the United Kingdom and Canada, the incidence of vaccine-associated paralytic poliomyelitis occurring since testing using the revised WHO methodology began in the mid-1980's is at or below the previous levels associated with vaccine tested by methods similar to FDA's previous standards, demonstrating that the adoption of the WHO standards has continued to result in safe vaccine.

IV. Significant Changes to the Proposed Rule

In the proposed rule of May 5, 1986, FDA proposed to revise the additional standards for Poliovirus Vaccine Live Oral in 21 CFR 630.10 through 630.17. FDA proposed a number of changes in the biologics regulations that govern the manufacture of the vaccine. Each of the proposed changes was discussed in the preamble to the May 1986 proposed rule. For most of the proposed amendments no comments were received, or the comments supported the amendment, or the comments were technical and noncontroversial in nature.

Most of the comments received on the May 1986 proposed rule centered around FDA's proposal to amend the requirements for neurovirulence testing in monkeys in 21 CFR 630.16(b). FDA proposed to require use of a neurovirulence test that was based on the standards of WHO, adopted in 1982. The proposed revised test differed from the test required by FDA in several significant respects as outlined in the following chart.

	Current test	Proposed test
A. Intrathalamic inoculation	Thirty monkeys injected intrathalamically for each monovalent pool.	Intrathalamic inoculation not required.
B. Intraspinal inoculation:		
(1) Inoculum	Median tissue culture infective dose ($TCID_{50}$) of at least $10^{7.0}$ and dilutions of 1:1,000 and 1:10,000.	$TCID_{50}$ of between $10^{6.5}$ and $10^{7.5}$, no dilutions tested.
(2) Number of monkeys inoculated	Fifteen monkeys injected for each monovalent virus pool; five receiving undilute, five 1:1000, and five 1:10,000 diluted vaccine.	At least 12 monkeys inoculated if testing either Type 1 or Type 2 poliovirus, and at least 20 monkeys if testing Type 3 poliovirus.
(3) Reference attenuated poliovirus—type.	Reference Attenuated Poliovirus, Type 1, used as control for test, regardless of virus type being tested.	Referenced attenuated poliovirus of corresponding type (Type 1, Type 2, or Type 3) used as control.
(4) Reference attenuated poliovirus—frequency of testing.	Reference attenuated poliovirus tested at least every 10 production lots of vaccine, but must be tested within 3 months of test of vaccine lots.	Reference attenuated poliovirus tested concurrently with testing of vaccine, certain exceptions provided.

	Current test	Proposed test
(5) Basis of comparison	Comparative evaluation made of evidence of neurovirulence of poliovirus under test and reference attenuated poliovirus using histopathological criteria specified in the regulations.	Comparative evaluation made of magnitude of neurovirulence of polio virus under test with results of test using reference attenuated poliovirus by a mathematical method that is expected to reject poliovirus vaccine lots with neurovirulence identical to the reference at a frequency of not less than 1 in 100.

FDA is including several additional changes to the regulations, most of which are related to the test for neurovirulence in monkeys:

1. In § 630.10(b)(2)(ii), FDA will require that poliovirus strains other than the Sabin strain now in use be found comparable to the Sabin strain when inoculated in monkeys by the intrathalamic and intramuscular routes. In the May 1986 proposed rule, FDA proposed to remove entirely from the regulations requirements for intrathalamic and intramuscular testing. (For additional discussion see FDA's response to comment 22.)

2. In § 630.10(c)(1), FDA will permit the use of cell cultures other than primary monkey kidney cells for the preparation of seed virus. FDA's proposed rule would have required that seed virus used in vaccine manufacture be prepared in primary monkey kidney cell cultures. FDA's proposal was based on a history of neurovirulence testing that showed that repeated passages of the virus in human cells may increase the possibility of the virus reverting to a more neurovirulent state after ingestion. FDA is aware of the experimental methods of preparing virus in continuous simian (monkey) cell cultures that may not result in the same increased possibility of viral reversion. In addition, future research may result in the ability to genetically manipulate poliovirus so as to control or remove its neurovirulence properties, making a restriction on repeated passage through human cell lines unnecessary. Although inadequate data are available at this time to show that these alternative technologies will result in a safe and effective vaccine, FDA finds that a prohibition against the use of such technologies is not warranted. A manufacturer requesting licensure of an oral poliovirus vaccine with the seed virus prepared in a cell culture other than primary monkey kidney cells would need to submit extension data demonstrating that the seed virus is at least equivalent to that grown in monkey kidney cells in properties affecting safety and efficacy. The cell culture used in preparing the virus would be required to meet the standards prescribed in 21 CFR 610.18.

3. In § 630.14(b)(2), the WHO reference standards may be used as controls for evaluation of the monkey neurovirulence test only upon FDA approval. In the proposed rule of May 1986, FDA proposed that the WHO references could be used without FDA approval. (For additional discussion see FDA's response to comment 15.)

4. In § 630.16(b)(3), FDA will require that individual outlier scores be evaluated by a method approved by the Director, Center for Biologics Evaluation and Research (CBER). Outlier scores are neurovirulence scores in one or more monkeys that are higher than experienced up to that time with the reference virus. In the proposed rule of May 1986, only the mean neurovirulence score would be evaluated for determining the acceptability of a monovalent virus pool intended for vaccine use. (For additional discussion see FDA's response to comment 28.)

5. In § 630.17, FDA will permit the continued use of the previously codified neurovirulence test in monkeys as an alternative to the revised test included in § 630.16. In the proposed rule of May 1986, the revised test would replace the former test entirely.

It has always been FDA's position that both the previous test and the revised test for neurovirulence in monkeys are adequate for use in helping to ensure the continued safety of oral poliovirus vaccine. The revised test does have the advantages of providing a statistical basis for the comparison of neurovirulence properties among currently licensed vaccine, experimental vaccine, and vaccines in use internationally, and needing fewer monkeys than the previous test. Thus, FDA believes the revised test is the preferred test for use in its laboratories for monitoring oral poliovirus vaccines in general, and FDA intends to use primarily the revised test for testing of submitted lots FDA may decide to perform. However, FDA also believes that the former test is satisfactory for determining the acceptability of individual monovalent virus pools by a manufacturer. By permitting a manufacturer continued use of the formerly required test, expenses related to the initial validation of the revised test (see § 630.16(b)(4)) at the manufacturer's laboratories will be avoided and the manufacturer will be permitted to continue use of a test in which both FDA and the manufacturer have confidence. FDA is also including as § 630.1198(d) (21 CFR 630.19(d)) of the final rule the criteria for when the Director, CBER, may require additional neurovirulence testing of the seed virus when monovalent virus pools are tested according to § 630.17. This requirement was formerly included in § 630.10(c)(5). For clarification and consistency, FDA is changing the phrase "evidence of a change" to "evidence of a significant increase" and the phrases "production virus" and "seed virus strains" to "seed virus" in § 630.10(c)(6).

FDA has always interpreted this requirement to mean that only a significant increase in neurovirulence that may be related to instability of the seed virus or other similar problems requires the manufacturer to perform additional neurovirulence testing in monkeys. Questions about this interpretation have been raised in tort litigation (see below). This change in the wording of the regulation is to clarify the wording and to ensure that all interested persons are readily aware of this interpretation.

Questions about the agency's past interpretations of the oral poliovirus vaccine regulations have been raised in tort litigation brought against the United States. There is no doubt that FDA has broad authority to promulgate regulations governing the manufacture of oral poliovirus vaccine. It is undisputed that the original promulgation of the regulations in 1961 and subsequent amendments to the regulations since then were proper exercises of statutory authority. Questions have been raised in the litigation as to whether the regulations in effect at various times were followed in certain respects. Litigants have argued that in some instances the agency's interpretations of the regulations were impermissible.

In a recently issued opinion, the District Court for the District of Maryland in consolidated litigation brought under the Federal Tort claims Act (*In re Sabin Oral Polio Vaccine Products Liability Litigation*, No. MDL

780 (D. Md. April 18, 1991)) found certain past agency interpretations of the oral poliovirus vaccine regulations to be impermissible. The court also found other interpretations that had been challenged by the plaintiffs to be acceptable. No final judgment or finding of liability has been entered in this litigation. The court specifically stated that its findings do "not imply that the public health is or has been endangered in any respect."

The agency continues to believe that since the regulations were first promulgated the interpretations by the Federal employees involved in the vaccine regulatory program were proper with respect to science, public policy, and law. Nevertheless, the agency is making some changes in these final regulations in several sections of the regulations so that disagreements about permissible interpretations will not affect the current implementation of these regulations and the important ongoing public health program to prevent poliomyelitis through the use of oral poliovirus vaccine.

In this final rule certain clarifying changes are being made. Clarifications are intended both to provide less ambiguous language and, to the extent courts have found that certain interpretations are not permissible, to change the regulations appropriately. It is clear that the agency has statutory authority to make changes to the existing regulations. Additional changes to the regulations being made pursuant to that authority include the following:

6. It has always been FDA's position that in interpreting the agency's regulations, including the oral poliovirus vaccine regulations, the agency may appropriately take into account the public health consequences of the interpretation. For example, previous § 630.16(b) (now recodified as § 630.17(b)) describes a comparative evaluation to be made of the evidence of the neurovirulence of the poliovirus vaccine under test and the Reference Attenuated Poliovirus with respect to specified factors. The agency's longstanding interpretation permits agency decisionmakers to take into account the effect on vaccine supply, and consequently on the public health, when interpreting this regulatory provision. Because questions about whether the language of the regulation permits this discretion have arisen in litigation brought against the United States, FDA is clarifying the wording of the regulation to remove any doubt about whether the agency may properly consider the public health consequences when interpreting any provision of the oral poliovirus regulations. This clarification, which adds § 630.19(d), is to make explicit the agency's intention that in interpreting these regulations FDA may consider any potential effect on individual or public health, including effects related to vaccine supply. By codifying this provision in the oral poliovirus regulations, the agency in no way intends to suggest that this same principle does not apply to other FDA regulations. When appropriate, the agency will continue to take into account the public health consequences of its interpretation of any regulation.

7a. Revised § 630.13(a) was proposed in order to remove confusion about permissible interpretations of the provision limiting the number of tissue culture passages from the original strain. The agency has consistently interpreted the phrase "original strain" to include material known as "Sabin Original Merck" (SOM), which was produced by scientists at Merck, Sharp, and Dohme in the 1950's and "Sabin Original Rederived" (SOR), which was produced by scientists at Pfizer, Ltd., in the 1960's, as well as material known as "Sabin Original" (SO), produced by Dr. Albert Sabin in the 1950's.

In tort litigation referred to above, questions have been raised concerning whether the phrase "original strain" could permissibly be interpreted as applying to any material other than SO. The agency continues to believe that the phrase "original strain" appropriately means SO, SOM, or SOR with respect to Sabin strain material. The amendment to § 630.13(a) is intended to embody the agency's interpretation in less ambiguous language.

Type 3 seed now being used to manufacture oral poliovirus vaccine in the United States, as well as many other places in the world, is produced from SOR, which is made from a virus clone derived from SOM. Revised § 630.13(a) specifically permits virus in vaccine to be five tissue culture passages from a clone derived from one of the first five tissue culture passages of the original strain. Consequently, there can be no doubt that currently available vaccine produced from seed made from SOR meets the requirements of this regulation.

The agency has also always interpreted this provision (§ 630.13(a)) to apply only to bulk tissue culture passages, not to other techniques, such as "plaque purification" steps. The agency does not wish the use of the word "passages" in proposed § 630.13(a) to be misconstrued to mean anything other than bulk tissue culture passages and has therefore amended the proposed language to repeat the phrase "tissue culture passage" throughout.

7b. Because some lots manufactured in the early period of production of oral poliovirus vaccine were made directly from strain material, questions have been raised in litigation against the United States concerning testing such strain material. Litigants have argued that strain material used directly to produce vaccine lots should be tested in accordance with the requirements governing seed material. The agency continues to believe that the early use of strain material to produce vaccine lots directly did not thereby mean that the strain material had to be qualified as seed material. As previously stated, the agency believes that SO (produced by Dr. Sabin), SOM (produced by Merck, Sharp, and Dohme), and SOR (produced by Pfizer, Ltd.) all constitute original Sabin strain material. Therefore, production of lots directly from any of these strain materials should not require that SO, SOM, or SOR be tested in accordance with the criteria for qualification of the seed virus in § 630.10(c).

New § 630.10(b)(4) has been added to embody this longstanding agency interpretation. The agency expects future vaccine lots to be prepared in a seed lot system, as specified in new § 630.10(c). However, this revision of § 630.10(c) is not intended to suggest that previous lots produced directly from strain material were or are unacceptable. Vaccine licenses based in part on lots manufactured directly from strain material remain valid.

7c. FDA is also amending § 630.16 (b)(1)(i) and (b)(1)(ii) (new § 630.17 (b)(1) and (b)(2)). Questions have been raised in litigation concerning the agency's longstanding interpretation of these provisions with respect to evidence of inoculation. Under these provisions at least 30 monkeys are injected intrathalamically, and three groups of at least 5 monkeys are injected intraspinally. In keeping with § 630.16(b)(1)(iii) (new § 630.17(b)(3)), which provides that a test is satisfactory if "at least 80 percent of the animals in each group survive the observation period," the agency has always interpreted the inoculation provisions to require that at least 80 percent of the minimum number of animals to be injected show evidence of inoculation. In other words, for the intrathalamic test at least 24 monkeys are to show evidence of inoculation, and for the intraspinal test at least 4 monkeys per group are to show evidence of inoculation in order to have a valid test. The language of § 630.16 (b)(1)(i) and

(b)(1)(ii) (new § 630.17 (b)(1) and (b)(2)) have been revised to convey this interpretation more clearly.

7d. In the tort litigation, questions have also been raised about the permissible interpretation of neurovirulence test results under § 630.16(b)(1)(iii) (new § 630.17(b)(3)). This provision lists five factors to be considered in making a comparative evaluation of the evidence of neurovirulence of the virus under test and the Reference Attenuated Poliovirus. Under the unrevised regulations, as well as under new § 630.17(b)(3), the reference vaccine is required to be Type 1 vaccine. Historically, Type 3 vaccine has had more variable neurovirulence test results than has Type 1 vaccine.

Under the agency's longstanding interpretation of the neurovirulence test regulations, the comparative evaluation of the intraspinal test results has been made based on the final neurovirulence grade. This number given to lesions indicative of poliomyelitis is the higher of the severity score (at the site closest to the site of inoculation) and the spread score (at the site distant from the site of inoculation). Intrathalamic test results have in recent years been evaluated not through the final neurovirulence grade, but by looking for a match between test lot results and reference vaccine history with respect to both severity and spread scores for each monkey. Questions have been raised in litigation concerning whether this differential approach to evaluation for the intraspinal and the intrathalamic tests is permissible under the wording of former § 630.16(b)(1)(iii).

The agency believes that it is appropriate from both a scientific and a public policy perspective to continue to evaluate the intraspinal and the intrathalamic test results somewhat differently. The differences in manner and route of inoculation of the two tests lead to expected differences in test results. For example, injection of the inoculum directly into the spinal cord means that more spread of the virus is expected simply through physical transmission of the virus resulting from the injection itself, rather than through replication of the virus. Consequently, the spread scores have a different scientific significance in the intraspinal test than in the intrathalamic test.

The agency is revising § 630.16(b)(1)(iii) (new § 630.17(b)(3)) to state explicitly that the five factors listed may be weighted and interpreted as the Director, CBER, or other agency officials deem appropriate. The revised section specifically states that the factors may be considered in different ways for monkeys inoculated intraspinally and for monkeys inoculated intrathalamically. In keeping with past interpretations and with new § 630.16(d) (discussed above), new § 630.17(b)(3) states that other relevant factors, such as public health consequences, may also be considered in evaluating neurovirulence test results.

The agency expects that Type 3 vaccine results will continue to be more variable than Type 1 reference vaccine results and believes that the neurovirulence test regulations continue to allow room for appropriate judgments in making the comparisons between the various types of vaccine lots and the reference vaccine. The agency has always intended the neurovirulence test provisions of the regulations to allow for appropriate interpretations, and the agency intends this change to reflect and permit such reasonable flexibility.

7e. The agency is adding new § 630.19(e) to provide explicit authority for the Director, CBER, to approve an exception or alternative to any requirement in the additional standards for live oral poliovirus vaccine. A similar provision already exists for blood, blood components, and blood products at § 640.120 (see 55 FR 10420, March 21, 1990).

Modification of any particular test method or manufacturing process may be approved by the Director, CBER, under current § 610.9, based upon evidence that the modification will provide assurances of the safety, purity, potency, and effectiveness of the product equal to or greater than the assurances provided by the method specified in the regulations. Recognizing that this equivalent methods regulation does not necessarily apply to all aspects of licensing, collecting, processing, testing, storing, and distributing products, FDA revised the blood product regulations to authorize approval of exceptions or alternatives more broadly. Similarly, FDA believes that technological and scientific advances and concerns about the continued availability of oral poliovirus vaccine products support an amendment to § 630.19 to provide the Director, CBER, clear authority to approve an alternative or exception to particular requirements when warranted. The Director would approve such exception or alternative only if, in the judgment of the Director, the safety, purity, potency, and effectiveness of the final product is adequately maintained.

7f. The agency believes that it is in the best interest of the public health to remove any question about the status of the current vaccine supply, which is safe and effective vaccine. This vaccine was approved under the agency's longstanding interpretation of the regulations. These amended regulations embody those interpretations and make clear that the standards that were actually applied to approve the current vaccine are permissible. Therefore, new § 630.19(f) provides that, upon the effective date of the regulation, all vaccine previously released or distributed is deemed to meet the requirements of these amended regulations. Previously distributed vaccine that has not yet been administered, but is still within expiration date, may be administered without doubt as to its present legality under the agency's regulations.

V. Comments and FDA's Responses

FDA received 29 letters of comment from 11 different persons in response to the proposal. Five persons expressed complete support for FDA's proposed rule. Four persons, including the current manufacturer of oral poliovirus vaccine, Lederle Laboratories, opposed the rulemaking and provided most of the comments summarized below. Two persons had only technical questions concerning the rulemaking. A summary of the comments and FDA's responses follows:

A. General Comments

1. One comment urged that the proposed rule be reconsidered and subject to further study and review before being made final.

FDA believes that further study and review of the rule are not needed before the regulations are made final. Extensive studies by FDA and international collaborative studies involving FDA under the auspices of WHO have demonstrated the validity of the rule.

2. Two comments questioned FDA's reasons for the rulemaking. Specifically the comments contended that:

i. There is no advantage in the availability of multiple sources of oral poliovirus vaccine and, indeed, it may be a disadvantage because of an increased instability in vaccine supply due to adjustments in vaccine inventory levels.

ii. The current regulations are not unduly burdensome and the fact that a regulation is burdensome is not itself a valid reason to change the regulation.

FDA recognizes that a manufacturer may need to adjust product inventory in response to competitive pressures; however, such adjustments should not lead to disruption of the vaccine supply. FDA believes that the availability of multiple sources of vaccine provides greater flexibility in responding to any

possible disruption in vaccine supplies from any single supplier.

FDA believes it is in the interest of the public health to remove any unnecessary regulatory barriers to the availability of safe and effective vaccine. Moreover, as discussed in the introduction to this rule, under the Regulatory Flexibility Act and Executive Order 12291, FDA has undertaken to review the regulations and remove or revise those regulations found to be unduly burdensome. FDA agrees that the fact that a regulation is burdensome is not necessarily a sufficient reason to change the regulation, if the regulation is necessary to protect the public health. However, the agency believes it is appropriate to select the least burdensome regulatory alternative that achieves the goal of effectively helping to ensure safe, pure, and potent biological products. FDA believes that the final rule will achieve this goal while also being less burdensome to manufacturers.

3. Two comments stated that the regulations should not be revised to facilitate U.S. licensure of oral poliovirus vaccine from multiple sources. The comments urged that any new applicants for U.S. licensure of oral poliovirus vaccine should be required to show initially that their vaccine meets current regulations as a means of validating both the new manufacturer's vaccine and the new standards.

Before FDA would license a new oral poliovirus vaccine, the manufacturer must have submitted extensive laboratory and clinical data demonstrating the safety and effectiveness of the vaccine. After licensure of the new vaccine, each subsequent lot of vaccine must be shown to continue to meet the safety and effectiveness standards. FDA believes that conformance with the revised standards will lead to the continued safety and effectiveness of the vaccine and that the additional step of meeting the former requirements is unnecessary.

FDA also believes that the revised standards have been adequately validated through extensive international experience and use of the revised test methods in FDA's own laboratory. Elsewhere in this preamble, FDA discusses the scientific validity of the revised test for neurovirulence in monkeys.

4. Three comments contended FDA should not rely on the epidemiological data provided by WHO as support of the safety of vaccine manufactured according to WHO standards. The reasons given for this comment were:

(a) The data from many other countries are less reliable than U.S. data.

(b) The data from the United Kingdom are largely from a period before vaccine tested by the current WHO standards was released, and the data from Canada are based on use of a vaccine with a highly attenuated type III seed (Pfizer RNA-derived seed).

(c) One comment cited data from Brazil concerning an outbreak of poliomyelitis caused by wild virus that may have been due to the use of a subpotent vaccine and argued that surveillance data from countries having such lower potency standards may not be relevant to the U.S. experience.

(d) Genetic comparison of the Sabin type 3 strains used in the United States with Sabin type 3 strains used in other countries demonstrates that the type 3 virus used for vaccine in the United States is more attenuated and more genetically stable than the type 3 virus used for vaccine in other countries.

Related to these assertions, the comments contended that epidemiological studies carried out in other countries are not valid as support for changing the requirements in the United States.

FDA recognizes that differences in vaccines, immunization policies, and target populations in each country make direct comparison of the incidence of vaccine-associated poliomyelitis among countries difficult. However, the fact that the revised neurovirulence testing has been used for a variety of vaccines in a number of countries without an increased incidence of vaccine-associated poliomyelitis occurring in any of these countries does further validate that the revised test has functioned successfully under a variety of conditions. In addition, when comparing the incidence of vaccine-associated poliomyelitis in countries such as the United Kingdom and Canada before and after the revised test was adopted, data demonstrate that there has been no increase, in fact in some cases a slight decrease, in the incidence of vaccine-associated poliomyelitis.

The data from Brazil, provided with a letter of comment, concerned the followup investigation of an outbreak of poliomyelitis caused by wild virus. The outbreak may have occurred because children were inadequately protected by a subpotent vaccine in use at the time in Brazil. The data had no relevance to the adequacy of the neurovirulence testing of the vaccine. FDA has not relied on data from Brazil in evaluating the adequacy of the revised test except to note that no country using the revised test has had an incidence of vaccine-associated poliomyelitis indicating a problem with vaccine neurovirulence. FDA is not proposing to change the potency requirements for oral poliovirus vaccine.

FDA believes that the clinical significance of any genetic differences between the vaccine manufactured in the United States and other countries has not been demonstrated. Almost all vaccines were derived from the same original Sabin strains. Differences in the degree of attenuation between the vaccine in the United States and other Sabin strain vaccines have not been documented by epidemiological evidence. Even if such a difference in attenuation were documented, such evidence would only further document that the revised test has been successful in screening out vaccines of unacceptable neurovirulence.

5. Three comments objected that the current manufacturer of oral poliovirus vaccine in the United States has not received any formal written request for participation in collaborative studies nor sufficient information to initiate collaborative studies regarding the proposed regulations. Five comments objected that the proposed rule has not been presented to an FDA advisory committee for formal review. The comments viewed the lack of collaborative studies and formal advisory committee review as departures from usual FDA policy.

FDA agrees that, until publication of the 1986 proposed rule, the current manufacturer of oral poliovirus vaccine, Lederle Laboratories, was kept informed of FDA's development of the revised neurovirulence test only on an informal basis. FDA provided formal notification of its intent to revise the neurovirulence test and other regulations by publication of the proposed rule on May 5, 1986.

FDA has performed collaborative studies with Lederle Laboratories concerning new potency test methods (see comment 17); however, FDA agrees that it has not performed collaborative studies concerning the test for neurovirulence in monkeys directly with the current manufacturer. Lederle Laboratories was invited to participate with FDA in the WHO collaborative studies but elected not to. After the proposed rule of May 1986, FDA met with Lederle Laboratories several times to discuss possible collaborative studies but no agreement on appropriate studies was reached. However, FDA has performed many studies to determine the acceptability of the revised test for neurovirulence in monkeys. FDA collaborated with other national health

agencies in testing programs as part of the initial development of the WHO revised standards. For the last 8 years, FDA has tested by the revised test for neurovirulence each lot of oral poliovirus vaccine submitted to FDA for release. Based on the experience of FDA, other national health agencies, and international manufacturers of oral poliovirus vaccine, FDA finds that the revised test methods can be implemented successfully in different laboratories to ensure the safety of oral poliovirus vaccine. Accordingly, FDA did not consider it necessary to conduct collaborative studies with the current manufacturer before initiating this rulemaking. Lederle Laboratories has also had an opportunity to conduct studies relevant to the proposed rules. The results of some of these studies were submitted to FDA in support of Lederle's comments and were presented at the Advisory Committee meetings of January 1987 and November 1989.

As discussed elsewhere in this preamble, FDA held a public meeting to discuss the proposed rule with FDA's Vaccines and Related Biological Products Advisory Committee on January 29, 1987, and again on November 17, 1989. FDA also had discussed the revised test for neurovirulence in monkeys with the Advisory Committee on two other occasions in 1982 and 1985. The Advisory Committee reviewed the revised test methods in sessions closed to the public in connection with a review of a pending license application. The Advisory Committee affirmed the acceptability of the revised methods and of vaccine tested by these methods.

Under § 14.75 (21 CFR 14.75), the Commissioner has determined that the portions of the minutes of the closed session of the Advisory Committee meetings of 1982 and 1985 concerning consideration of the WHO test methods may be made available for public disclosure without undue interference with agency or advisory committee operations. Therefore, those portions of the minutes, with some proprietary commercial information expunged, have been included in the docket for this rulemaking.

6. Numerous comments asked questions concerning the mathematical formulas and statistical methods used in the test for neurovirulence in monkeys.

FDA has not included an extensive discussion in this rule of the mathematics and statistical methods used in the test for neurovirulence in monkeys. The agency will allow each testing laboratory flexibility to select appropriate statistical methods for conducting the test, provided the laboratory uses recognized statistical methods meeting the general restrictions specified in the regulations. FDA's staff of statisticians and scientists remains available to any testing laboratory to help resolve specific problems that a laboratory may have in applying the revised test for neurovirulence in monkeys, including the methods of statistical analysis. Each manufacturer must submit to FDA a description of its statistical methods as part of its product license application, and any subsequent change to the methods must be submitted as an amendment to the product license application. FDA is amending § 630.16(b)(2) to clearly require that the method of evaluating neurovirulence involve concurrent testing of the monovalent virus pool and the reference attenuated poliovirus.

7. One comment agreed that the conservation of monkeys would be a positive outcome; however, the comment contended that FDA implied that monetary savings was an overwhelming consideration in redesigning the test for neurovirulence in monkeys. In addition, the comment stated that other factors, such as yields and batch size of vaccine pools and quality of animal care, influence total number of test monkeys used and the regulation and the availability of multiple suppliers of vaccine may actually increase the total number of test animals used.

FDA's statement that the revised test would conserve the number of test monkeys, a scarce and expensive resource, is an accurate statement and a reasonable factor in FDA's conclusion that the neurovirulence test should be revised. The preambles to this rule present the reasons for the rulemaking. The conservation of monkeys is only a minor, though relevant, reason.

FDA believes that the revised regulation will not encourage an increase in the use of test monkeys. The decision to change batch sizes of oral poliovirus vaccine is a business decision left solely to the manufacturer. FDA is not influencing by these amendments the yields or batch size or oral poliovirus vaccine. In the past, there has always been a lag period of many months between the time of formulation of a vaccine and its marketing, during which a manufacturer may adjust its production schedule to meet the projected demand for vaccine. Therefore, even if more than one manufacturer may produce vaccine for sale in the United States, the total production of vaccine should continue to meet demand. There should not be an increase in the total number of vaccine lots produced and in the number of monkeys used for testing the vaccine. The quality of animal care is closely regulated by FDA and other Federal and local government agencies, with resulting continued high standards of care. The standards of animal care will not be affected by this rulemaking.

8. One comment on the preamble to the proposed rule suggested that instead of the term "uniform" as it refers to test animals, the term "equivalent" is more appropriate (51 FR 16625). A comment also suggested that the term "human cell culture" or "human cell substrate" is more appropriate than "human cell line" when discussing proposed § 630.10(c)(1) (51 FR 16622).

FDA agrees with the comments. Because the terms appear only in the preamble to the 1986 proposed rule, no further action is necessary.

B. Effective Date—Transitional Period

9. One comment recommended that the transitional period during which seed virus and monovalent virus pools prepared and tested under the current regulations may be used for vaccine manufacture be extended to 2 years. (In the 1986 proposed rule, FDA proposed a transitional period of 180 days after the date of publication of the final rule.) The comment noted that such an extension is necessary to avoid disruption or oral poliovirus vaccine production while the manufacturer performs the four required neurovirulence tests on each of the three types of poliovirus reference material.

FDA agrees with the comment. However, because the regulations will permit the continued use of the current neurovirulence test, the methodology used for testing the seed virus and monovalent virus pools of the current licensed manufacturer will meet the requirements of the revised standards. Accordingly, no provision for a transition period will be necessary. FDA has removed from the final rule proposed § 630.10(c)(6), which provided a transition period for the use of seed viruses.

C. Criteria for New Vaccines

10. Four comments on proposed § 630.10 (a) and (c)(1) stated that the regulation should prohibit the passage in human cell cultures of poliovirus intended for vaccine manufacture. Three comments cited in vitro experiments that provided limited evidence that even single passage in a human cell culture may affect the neurovirulence of poliovirus after ingestion.

FDA does not believe that the use of human cell cultures to manufacture oral poliovirus vaccine should be prohibited. FDA recognizes that there is evidence illustrating potential problems in the

passage of poliovirus for vaccine production, and FDA will carefully consider these potential problems when reviewing any application for the licensure of an oral poliovirus vaccine. For many years, an oral poliovirus vaccine produced using a single passage in a human cell culture was licensed and marketed successfully in the United States with a continuous record of clinical safety. The manufacturer of the vaccine withdrew its license in 1979 for reasons unrelated to vaccine safety and effectiveness. Oral poliovirus vaccine produced utilizing a single passage in human cell culture are in use elsewhere in the world and continue to demonstrate that such a vaccine can be safe for the routine immunization of infants and children. Through the licensure process and regulatory standards, any oral poliovirus vaccine marketed in the United States is demonstrated by the manufacturer to be safe and effective; therefore, a regulation prohibiting the use of human cell cultures is unwarranted.

11. One comment proposed § 630.10(b)(2) recommended that the regulations provide specific criteria for ensuring the safety of new vaccines manufactured from poliovirus strains other than Sabin strains. The comment contended that specific criteria are necessary so that such a critical safety judgment is not made by the manufacturer of the vaccine. Another comment noted that the proposed neurovirulence test would not be appropriate for testing future DNA clone vaccines because too few monkeys may display neurovirulence, thereby invalidating the test.

FDA is amending § 630.10(b)(1) in the final rule by removing the requirements that Sabin strain virus be identified by historical records specified in the regulations. Consistent with the proposed rule, these requirements will apply to poliovirus strains other than the Sabin strain and are included in § 630.10(b)(2) of the final rule. Sabin strain viruses have been fully characterized, and FDA has always deemed it necessary to require a manufacturer of a Sabin strain vaccine to duplicate these efforts when seeking licensure with FDA. FDA finds that the historical data already available to the agency from the pioneer testing of Sabin strain virus and the extensive data necessary to qualify the seed virus (see §630.10(c)) are adequate to characterize the virus to be used in vaccine manufacture.

The development of a new oral poliovirus vaccine involving virus strains other than Sabin strains would most probably involve the use of biotechnologies as yet under investigation. Without knowing the origin and means of production of a vaccine composed of new strain of poliovirus, FDA cannot predetermine the specific evidence that would be necessary to document the safety of the vaccine. For example, with recombinant DNA-derived vaccines very different testing standards may be necessary. As with all new drugs and biological products, it is the manufacturer's responsibility to conduct the appropriate laboratory and clinical studies for investigating its vaccine, although FDA may provide advice and technical assistance. Under § 630.10(b), FDA would decide, most probably with the review and recommendations of scientific experts outside the agency, whether the evidence provided by the laboratory and clinical studies demonstrates that the new vaccine is at least as safe as oral poliovirus vaccine using Sabin strains. FDA believes that this system provides for the continued safety of oral poliovirus vaccine while providing the flexibility necessary for appropriately assessing new technologies.

12. One comment on the preamble to the proposed rule (51 FR 16621 and 16622) and proposed § 630.10(b)(2) questioned the incongruity of FDA stating in the preamble that any new oral poliovirus vaccine should at least be as safe and effective as the current vaccine using Sabin strains and its proposal to remove current § 630.10(b)(2) and to replace it with a general requirement that a new vaccine be shown to be at least as safe as the current vaccine. The comment questioned why the term "effective" was omitted from proposal § 630.10(b)(2).

FDA advises that the requirements in § 630.10(b)(2) concern only the demonstration of safety and potency of a new vaccine strain, potency being an element of the determination of effectiveness. Criteria for clinically demonstrating the effectiveness of a new vaccine, whether composed of Sabin strains or other strains of poliovirus, are included in §630.11.

13. One comment on proposed § 630.10(c)(2) requests that the regulation be clarified by adding the words "each of" so that it would read: "In addition, the neurovirulence of each of the first five consecutive monovalent virus pools * * *." FDA agrees with the comment. FDA is amending § 630.10(c)(2) accordingly and, for consistency, is amending similar wording in § 630.10(c)(3).

D. Tests on Monkey Kidney Cell Cultures

14. One comment stated that proposed § §630.13(b)(3)(iv) and 630.16(a)(6) (redesignated as § 630.18(a)(6)) are inconsistent because the former does not provide for use of a nonhuman cell system while the latter does. The comment requested that §630.13(b)(3)(iv) be amended to provide for the use of nonhuman cell systems.

FDA agrees with the comment. To make the wording consistent, FDA is amending § 630.13(b)(3)(iv) in the final rule by removing the word "human."

E. Reference Virus Preparations for Neurovirulence Testing

15. One comment on proposed §§ 630.14 and 630.16(b)(1) (redesignated as § 630.16(b)) stated that the proposed method for determining neurovirulence in monkeys is invalid scientifically. Based on a statistical prediction model using data generated by FDA's laboratories, the comment predicted that the current FDA type 1 reference standard (designated by FDA as NA–4) when tested against the WHO type 1 reference standard would fail the neurovirulence test in monkeys at a rate of 13 percent. The comment contended that the rejection rate is too high for an FDA reference preparation that has been shown to be a reliable standard for ensuring safe and effective vaccine in the past, indicating that the test method itself is invalid. The comment also disagreed with the existence of two reference standards (FDA and WHO reference standards) when the standards have not been shown to be equivalent.

FDA disagrees with the comment. The current FDA type 1 poliovirus reference (NA–4) is the same reference that has been used for neurovirulence testing since 1977. This reference is considered acceptable by WHO, and its suitability has been demonstrated by experience documenting the safety of vaccine used in the United States. The type 1 poliovirus reference available from WHO has been tested in comparison to the NA–4 reference on many occasions by FDA using the revised neurovirulence test, and in all cases it produced acceptable neurovirulence results. The WHO reference is therefore also acceptable. FDA has tested many lots of vaccine, shown to be acceptable through the use of the previously required neurovirulence test by the manufacturer, and all lots tested passed in comparison to both the NA–4 reference and the WHO reference using the revised test. This comparison testing has

demonstrated the adequacy of both references and the adequacy of the revised test method.

FDA appreciates the comment's general concern that any reference preparation available for use in the neurovirulence test be shown suitable for use in helping to ensure the continued safety of oral poliovirus vaccine. In evaluating the suitability of new reference preparations, whether prepared by FDA or WHO, FDA in general considers certain criteria. First, a new reference preparation should be shown to perform acceptably in the neurovirulence test in monkeys, consistent with the performance of accepted references and vaccine pools. Second, the reference preparation should be shown by experience, using vaccine containing either virus from the reference preparation lot or virus tested with the reference preparation, to result in the production of safe vaccine. The FDA and WHO reference preparations currently available have been shown to meet these criteria, and FDA considers them acceptable for use in the neurovirulence test.

Under § 630.14(b)(2) as proposed, a manufacturer could use a new WHO reference preparation without first determining that the new reference is acceptable to FDA. To ensure that FDA has the opportunity to review and approve a new reference preparation before it is used routinely, FDA is amending § 630.14(b)(2) to provide that use of a WHO reference preparation in the required neurovirulence test in monkeys is subject to FDA approval.

F. Test for Virus Titer

16. One comment on proposed § 630.16(b)(1) (redesignated as § 630.16(b)) asked for further clarification of the inoculum of $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per milliliter proposed for use in the test for neurovirulence in monkeys. Specifically, the comment asked if the potency testing should be performed on the exact monovalent viral pool inoculation sample to be used for the neurovirulence test or if the test can be done on a representative sample of the undiluted monovalent virus pool.

FDA is amending the rule so that the test for infectivity may be performed either on an aliquot of the inoculation sample or on an aliquot of the undiluted monovalent virus pool. FDA recognizes that in some cases a dilution of a monoalen virus pool must be made to attain a suspension containing the required infectivity titer of $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per milliliter. If a laboratory elects to test the undiluted monovalent virus pool, the method should be validated as being appropriate for determining infectivity of the inoculation sample.

17. One comment on §§ 630.15 and 630.16(b)(1) (redesignated as § 630.16(b)) asked that the regulations define the specific methodology for determining the $TCID_{50}$ because of the different potency values which may be obtained by different assay systems.

FDA agrees with the comment. FDA did not define in the proposed regulations the specific methodology for determining infectivity titers (potency) because several different systems have been found suitable for determining the potency of oral poliovirus vaccine. These systems include the use of monkey kidney or human cell cultures maintained in tubes, bottles, or microtiter plates.

The numerical value for potency obtained by a laboratory may vary, depending on the assay method used. Until the mid-1970's, FDA and vaccine manufacturers routinely used a titration method in rhesus monkey kidney (RMK) cell cultures. The requirements in former § 630.17(c) concerning the potency per human dose of vaccine are based on the use of the RMK test. In 1976, FDA initiated studies of a trivalent reference poliovirus to compare potency values determined by the RMK test with those determined by a procedure using a continuous human epithelial (HEp-2) cell culture. FDA found that the test in HEp-2 cells was acceptable and more sensitive (detects more virus) than the RMK test. FDA determined that potency values obtained by the RMK test could be converted readily to those obtained by the HEp-2 test by adding a correction factor of 0.6 $\log_{10}$ to reflect the increased sensitivity of the HEp-2 test. FDA began use of the HEp-2 test as an alternative potency test method in 1978. Subsequently, after collecting comparative data at its laboratory that confirmed FDA's findings, the current manufacturer of oral poliovirus vaccine submitted a license amendment to FDA to use the HEp-2 test. FDA approved the license amendment to use the HEp-2 test as an equivalent method, as then provided in 21 CFR 630.18 (now 21 CFR 610.9). The potency values in §§ 630.16(b), 630.17, and 630.19(c)(2) are based on the use of HEp-2 cells.

FDA agrees that all potency values in the regulations should be based on the same test and the test should be identified in the regulation. Accordingly, FDA is amending § 630.15(b) in this rule by converting the listed potency values to the comparable values based on the HEp-2 test by adding the correction factor of 0.6 $\log_{10}$ to each value. FDA emphasizes that this amendment does not change the potency requirements per human dose but only amends the expression of the requirements. FDA is also amending §§ 630.15(b), 630.16(b), 630.17(b), and 630.19(c)(2) in the rule to clarify that the listed potency values are based on the use of the HEp-2 test. Other methods for determining the potency of oral poliovirus vaccine may be acceptable provided they have been validated and approved by FDA. If another method is used, the potency values must be the equivalent of the values given in the regulations.

G. Tests for Safety

18. One comment on § 630.16(a)(1), (2), and (4) (redesignated as § 630.18(a)(1), (2), and (4)) recommended that FDA "give priority" to use of in vitro tests as alternatives to the animal tests described in the regulation. Another comment stated that the animal tests should no longer be required and tests in specific animal cell cultures should take their place for detecting exogenous infectious agents.

Section 630.18(a)(1) through (7) prescribes specific tests intended to help ensure that monovalent virus pools contain no demonstrable microbial agents except for the intended poliovirus. The tests in § 630.18(a)(1) through (4) utilize small laboratory animals. Considering the recent advances in technology, FDA is aware that new methods may be developed that provide equal or superior assurances that monovalent virus pools are free from other microbial agents. A manufacturer may apply to FDA to replace any of the tests prescribed in § 630.18(a)(1) through (7). As provided under the equivalent methods provision in § 610.9, FDA would approve the use of a different method upon a finding that the different method provides equal or greater assurances of product safety and purity.

H. Neurovirulence Test in Monkeys

19. Two comments on proposed § 630.16(b)(1) (redesignated as § 630.16(b)) stated that the proposed test for neurovirulence in monkeys has not been shown to correlate with clinical safety in the United States. One comment expressed concern over data cited in another letter of comment indicating that the rates of vaccine-related disease in some countries using vaccine manufactured under WHO standards are higher than in the United States and that adoption of the revised standards may result in an increase in the rate of vaccine-related disease.

FDA disagrees with the comments. For the past 8 years, FDA's laboratory has been applying the revised test to

vaccines released for use in the United States. FDA also participated in a collaborative study with other national health agencies to validate the revised WHO test. The agency believes these data suffice to establish the validity of this safety test. In addition, recent WHO surveillance data show low rates of vaccine-related poliomyelitis, comparable to those found in the United States, in countries that use vaccine tested by the current WHO method. This surveillance data, FDA's experience, and the experience of other national control authorities and manufacturers also demonstrate that the use of the revised test results in the production of vaccine of equivalent clinical safety.

20. Two comments on proposed § 630.16(b)(1) (redesignated as § 630.16(b)) expressed concern that the proposed lowering of the dosage administered to each monkey in the neurovirulence test is inadequately supported by available data. The comments believed that the dose should be at least equivalent to the dose administered to humans in vaccine and that, for type 3 poliovirus particularly, the neurovirulence scores obtained in the proposed test may be lower than experienced in the currently required test. One of the comments stated that the allowable range of the test dose $10^{5.5}$ to $10^{6.5}$ $TCID_{50}$) is too wide and the dose of the monovalent virus pool and reference should be more closely aligned to assure comparability.

FDA believes that the dosage required in the revised test is adequately supported and appropriate for the neurovirulence test. As discussed in response to the Advisory Committee's comments, data show that appropriate neurovirulence is shown through a wide range of dilutions, and FDA believes the dosage results in optimal sensitivity of the test.

Under the former standards, FDA required a test dose containing at least $10^{7.0}$ $TCID_{50}$ per mL and no upper dosage limit was prescribed. In practical terms, undiluted virus has been used for the test which typically may vary in potency through approximately one log of virus per milliliter: the same range of potency values that is specified in this final rule.

21. One comment asked whether any vaccines rejected under the old standards have passed the proposed standards. If so, the comment recommended that the rules not be changed until further data are available to determine whether the rejected vaccine is too virulent for clinical usage.

FDA is not aware of an occasion where a monovalent virus pool failed to meet the previous neurovirulence testing requirements but met the revised neurovirulence testing requirements. There were three lots of vaccine virus for which the manufacturer considered the neurovirulence test results for the intraspinal test unacceptable, although FDA has reviewed the results and finds them to meet the specific requirements of the regulations.

22. Two comments recommended that the requirements for the intrathalamic test (former § 630.16(b)(1)(i)) be retained because a double-sited, intrathalamic and intraspinal, test is essential to distinguish clearly among strains and to monitor passaged virus for reversions. The comments claimed that the intrathalamic test differentiates the various poliovirus strains more clearly than the intraspinal test. The comments contended that the high percent of negative results found in the intrathalamic test is necessary to demonstrate that the monovalent virus pool is properly attenuated and that a single positive result may indicate a small increased in the potential of the pool to cause vaccine-related disease when administered to humans. One of the comments noted that historically three monovalent virus pools have been rejected because of high neurovirulence displayed in the intrathalamic test, and the public health implications of releasing pools that would fail the intrathalamic test under the current standards is unknown.

FDA recognizes that the intrathalamic test was of value during the early development of oral poliovirus vaccine in distinguishing neurovirulence properties among various strains of poliovirus. Accordingly, FDA is including in § 630.10(b)(2) a requirement that any strain other than the Sabin strain demonstrate comparable results when injected into monkeys by the intrathalamic route as well as the intramuscular and intraspinal routes as one of the methods for demonstrating strain suitability.

In routine testing of Sabin strain vaccine virus, the intrathalamic test has yielded occasional positive results that have not been reproducible. According to the information available to FDA, including information presented at public meetings, in each case that a monovalent virus pool was rejected or withdrawn because of a failure of the intrathalmic portion of the neurovirulence test, the results could not be corroborated by another laboratory. In each case the pool was tested both by the manufacturer's and FDA's laboratories. The results at one of the laboratories would show one or two monkeys with high neurovirulence scores, rather than a general pattern of high neurovirulence displayed in the 30 monkeys inoculated by the intrathalmic route. The results at the other laboratory did not include any monkeys with high neurovirulence scores.

The lack of reproducibility may be due in part to the use of type 1 virus as a reference for testing viruses of types 1, 2, and 3, even though types 2 and 3 viruses are recongized to have different characteristics when inoculated into monkeys. In addition, the intrathalamic test generally results in little or no signs of virulence in monkeys: therefore, even isolated outlier results can result in the failure of a test vaccine.

FDA believes that an advantage of the revised neurovirulence test will be a greater consistency and reproducibility in test results. As part of the WHO collaborative study to validate the revised neurovirulence test, the revised test was able to detect a higher neurovirulence in virus undergoing three or four passages when compared with virus having undergone two passages. Accordingly, FDA believes that the focusing of the revised test on the intraspinal portion of neurovirulence will result in a more reproducible evaluation of vaccine virus. As described earlier in this preamble, the formerly required neurovirulence test has been shown appropriate for assuring the continued safety and effectiveness of oral poliovirus vaccine through its long history of successful use. Therefore, FDA will continue to permit the use of the formerly required test.

23. One comment on proposed § 630.16(b)(1) (redesignated as § 630.16(b)(2)) stated that FDA should decide upon and require a standard method for evaluating and scoring poliovirus lesions. Furthermore, the comment asked that FDA make available to manufacturers its method of evaluating and scoring poliovirus lesions.

FDA does not believe it would be useful to include details of such a scoring system in the regulations. It is not essential that the scoring systems used in different laboratories be identical, as long as poliovirus specific lesions are graded in proportion to their severity in a consistent fashion within each laboratory. Previous experience has demonstrated that such scoring systems can be implemented by direct communications between FDA's laboratory staff and manufacturers. Upon request, FDA will cooperate with any labboratory in its efforts to establish an approriate scoring system. FDA's method of evaluating and scoring poliovirus lesions is available upon request.

I. Neurovirulence Test—Monkey Requirements

24. One comment on § 630.16(b)(1) (redesignated as § 630.16(b)) asked for further clarification of the term "quarantine group" as it refers to monkeys used in the neurovirulence test. Specifically, the comment asked to know the appropriate composition and qualification of a quarantine group. The comment expressed the belief that a quarantine group should consist of animals of comparable age and weight.

FDA agrees that to assure consistent test results the test monkeys should be within a standard age and weight range. FDA is amending § 630.16(b) in the final rule to require, whenever possible, that the monkeys used in testing be of comparable size and weight. Historically, FDA has used juvenile rhesus monkeys (*Macaca mulatta*) weighing between 4 and 6 pounds. Whenever possible, the monkeys in a quarantine group are taken as a group from a single source (breeding colony or importer). On some occasions, to assure optimal utilization of monkeys, FDA's laboratories may combine animals from more than one source to form a quarantine group. The monkeys are then quarantined in accordance with 21 CFR 600.11(f)(2)(i).

25. Two comments on proposed § 630.16(b)(1) and (b)(1)(iii) (redesignated as § 630.16(b) and (b)(4)) objected to two provisions permitting alternative procedures in the test for neurovirulence in monkeys. Specifically, the comments objected to the provisions in § 630.16(b)(1) and (b)(1)(iii), which permit, in the event of a monkey shortage, the testing of a monovalent virus pool without concurrent testing of the corresponding type Reference Attenuated Poliovirus. One of the comments also objected to the provision in § 630.16(b)(1) that, whenever possible, the test monkeys should be from the same quarantine group and distributed randomly between the two test groups. The comment objected to the words "whenever possible" in this provision. The comment requested that these provisions either be removed or the regulation should specify the exact conditions under which alternative procedures may be used.

FDA agrees in part with the comments. Although sufficient numbers of monkeys have been available to date, the monkey supply has occasionally been threatened. By including special provisions for testing vaccines under conditions where there is an actual shortage of monkeys, FDA is providing added assurance of the continued availability of safe vaccine. FDA agrees, however, that the conditions under which this special provision may be used should be better defined in the regulation.

If a monkey shortage should develop, FDA intends to review the evidence that an acute shortage has occurred and confirm that no alternative sources of test animals are available before permitting nonconcurrent testing of the vaccine and reference. FDA believes that the review and approval of the agency should be a precondition for such noncurrent testing. Accordingly, FDA is adding § 630.16(b)(5) to the final rule to provide that, in the case of a monkey shortage, monovalent virus pools may be tested without concurrent testing of the corresponding type Reference Attenuated Poliovirus only upon the approval of the Director, CBER. FDA is also including in § 630.16(b)(5) the criteria for evaluating a nonconcurrent test, formerly included in § 630.16(b)(1)(ii). FDA is amending proposed § 630.16(b) and (b)(4) by cross-referencing § 630.16(b)(5) and removing the provisions concerning nonconcurrent testing.

FDA believes that a laboratory should design its monkey quarantine procedures and testing regimen to assure that test monkeys are from the same quarantine group. However, FDA recognizes that it may occasionally be necessary to use monkeys taken from two quarantine groups. FDA believes that the occasional use of two quarantine groups does not impair the assurance of safety of the neurovirulence test, provided that the monkeys from each quarantine group are divided randomly between those used for testing the monovalent virus pool and those used for testing the Reference Attenuated Poliovirus. However, FDA finds that this provision in § 630.16(b)(1) was not worded clearly. Accordingly, FDA is amending, for clarity, the provision in the rule concerning the use of monkeys from a single quarantine group.

26. One comment on § 630.16(b)(1)(i) (redesignated as § 630.16(b)(1)) requested clarification of the requirement that a test of a virus pool shall include at least one group of monkeys but no more than three groups. The comment asked whether the term "groups" refers to the number of times a virus pool may be retested, the number of different virus pools that can be tested at one time, or the number of quarantine groups that may be tested.

None of the definitions of "groups" offered in the comment is correct. The term "group(s)" refers to the number of animals inoculated at any given period of time as defined in § 630.16(b). As provided in the regulations, more than one group of animals may be used for testing a single monovalent virus pool if, for example, an inadequate number of positive animals is obtained from testing one or two groups, or if statistical evaluation of results obtained from testing one or two groups of animals indicates that addition of one or two additional groups is desirable for optimum evaluation of neurovirulence.

27. One comment on proposed § 630.16(b)(1)(i) (redesignated as § 630.16(b)(1)) recommended that the 60-percent criterion for test validity, that is the percentage of monkeys that must be inoculated in a group and survive the 48-hour observation period after inoculation, be amended to require an 80-percent survival rate.

The proposed criterion for test acceptability based on the number of monkeys surviving 48 hours after inoculation is consistent with the previous regulations (§ 630.16(b)(1)(iii)). FDA has found this criterion sufficient for assuring test validity and the continued safety of oral poliovirus vaccine.

FDA recognizes that laboratories using monkeys from a domestically raised colony consistently experience survival rates after 48 hours of greater than the 80 percent recommended in the comment. However, laboratories using monkeys caught in the wild have occasionally experienced a survival rate of less than 80 percent but greater than 60 percent without impairing the assurances of safety provided by the test for neurovirulence in monkeys.

28. Two comments on proposed § 630.16(b)(1)(ii) (redesignated as § 630.16(b)(2)) noted that the results of the neurovirulence test would be evaluated by comparing the mean values of neurovirulence assigned to the monovalent virus pool and the reference preparation while the current test results are evaluated by comparing the neurovirulence scores of individual monkeys. The comment expressed concern that a situation might arise where the neurovirulence displayed in a single monkey may be extraordinarily high, even showing paralysis, although the mean values for the monovalent virus pool and reference preparation compare acceptably. The comments recommended that individual extreme values continue to be considered in evaluating the results of the neurovirulence test in monkeys.

FDA agrees that extreme or outlier neurovirulence scores should continue to be considered and is including in § 630.16(b)(3) a requirement that each

manufacturer have a method of evaluating such outlier values when they occur. The method to be used by a manufacturer, including the criteria for determining the acceptability of the monovalent virus pool being tested, would be reviewed by FDA as part of the manufacturer's license application or as a license amendment.

FDA did not propose a specific method for evaluating outlier values. As stated by the Advisory Committee at its January 1987 meeting, the significance of outlier values has not been adequately determined. Thus far, the evidence gathered by FDA indicates that outlier scores are due to a particular susceptibility of an individual monkey to poliovirus rather than any distinctive properties of the poliovirus being tested. FDA intends to continue to evaluate outlier values as they occur by continuing the neurovirulence test with additional monkeys to see if there continue to be outlier scores or unacceptable neurovirulence according to the criteria in § 630.16(b)(2). Manufacturers may use a similar method to evaluate outlier scores. As additional evidence is gathered and our understanding of poliovirus increases, FDA expects that the appropriate methodology for evaluating outlier scores will change; therefore, FDA is leaving the regulations flexible to accommodate expected improvements in methodology.

J. Determination of Neurovirulence

29. One comment on proposed § 630.16(b)(1)(ii) (redesignated as § 630.16(b)(2)) stated that all manufacturers should be required to use the same mathematical model for evaluating data in the test for neurovirulence in monkeys. To ensure the continued availability of safe vaccine, the comment requested that acceptable and unacceptable neurovirulence scores be defined clearly in the regulations. The comment recommended that the performance of the mathematical model should be evaluated with currently produced and acceptable vaccine.

FDA does not believe that it is necessary for all manufacturers to use the same mathematical model. FDA has evaluated and found satisfactory a model based on the 1983 WHO standards (WHO Technical Report Series, No. 687, 1983). Details of the mathematical model are available upon request from FDA. The model includes the criteria for determining the acceptability of neurovirulence scores. FDA will consider manufacturers' proposals to use other mathematical models meeting the criteria of the regulations. The regulations provide adequate criteria to ensure that testing laboratories will have consistent test results provided a statistically sound mathematical model is selected.

K. Test with Reference Attenuated Poliovirus

30. One comment on proposed § 630.16(b)(1)(iii) (redesignated as § 630.16(b)(3)) stated that more than four tests of each Reference Attenuated Poliovirus should be required to define the variability of the assay.

FDA disagrees with the comment. In § 630.16(b)(1)(iii), FDA proposed to require that a laboratory perform a minimum of four tests on each reference virus preparation to define the performance of the reference and establish the variability of the assay. Experience at laboratories that have used this procedure has demonstrated consistently that four tests are adequate to define initially the performance of the reference and the variability of the assay. FDA recognizes, however, that if an assay displays unusual variability, more than four tests may be necessary. Each laboratory when establishing and validating its own procedures should employ appropriate statistical methods to evaluate the variability shown in the four tests of each reference to determine if additional tests may be necessary to adequately define assay variability. FDA is amending § 630.16(b)(3) in this rule to make clear that a minimum of four tests of each reference virus preparation is required but, regardless of the number of tests performed, the tests must be adequate to define the performance of the reference and establish the variability of the assay.

L. Tests for In Vitro Markers

31. Two comments on proposed § 630.16(b)(2) (redesignated as § 630.18(b)) asked that the requirements be amended to state clearly for which of the marker tests specified in the regulation alternative tests may be substituted. One of the comments stated that any substitute tests should be stipulated in the regulations. Another comment asked whether the marker tests are intended as safety tests or as tests of identity.

FDA agrees in part with the comment. The marker tests described in the regulation demonstrates that each monovalent virus pool retains the identity of the parent vaccine strain. FDA would approve other methods that provide comparable assurances of the continued identity of the virus. Accordingly, FDA is revising § 630.18(b) in this rule to clearly provide for the use of methods other than either or both of the prescribed marker tests, if shown to be of comparable value in identification of the attenuated strain. FDA is not aware of any alternative test that has yet been shown to be a suitable replacement for either of the required marker tests. Therefore, the agency cannot describe any alternative tests in the regulations at this time.

M. Consistency of Manufacture

32. One comment requested that the requirements of former § 630.18(b) be retained so as to require that each monovalent virus pool contained in a trivalent vaccine be one of a series of five consecutive lots shown to meet criteria for neurovirulence and in vitro markers. The comment contended that this requirement is necessary because, contrary to what FDA stated in the preamble to the proposed rule, factors other than the genetic instability of the seed virus, such as statistical variation among laboratories or test monkeys, may influence failure in the neurovirulence test in monkeys. The comment also requested clarification of FDA's statement in the preamble to the proposed rule (51 FR 16627) that failure of the neurovirulence test in monkeys is a random event related to the genetic instability of the seed virus.

FDA agrees that genetic instability of the seed virus is not the principal reason for failure of a monovalent virus pool, produced from an acceptable seed virus, to meet neurovirulence requirements. However, genetic instability could be the reason for a new seed virus failing to consistently produce vaccine virus of acceptable neurovirulence. Thus, acceptability of a seed virus can be demonstrated through its capacity to produce consistently acceptable monovalent virus pools. The former consistency requirements were based on the premise that the failure of a monovalent virus pool to meet neurovirulence requirements could be the result of a manufacturing deficiency. As a demonstration that the failure was not the result of a continuing manufacturing deficiency, FDA required that any monovalent virus pool intended for vaccine manufacture be one of five consecutive lots shown to meet neurovirulence and identity requirements. Thus, any time a monovalent virus pool failed, five consecutive lots had to be shown to meet neurovirulence requirements before any of the five lots could be released in trivalent vaccine. However, no criteria were provided to link the history of performance of monovalent virus pools with the continued qualification of the seed virus. Long

experience has shown that the failure of a monovalent virus pool, produced from an acceptable seed virus, is usually unrelated to deficiencies in the manufacturing process, but is usually due instead to test variability. Accordingly, to ensure consistency of manufacture, FDA proposed to require that each of the first five monovalent virus pods from a new seed virus be shown to meet neurovirulence and marker requirements (§ 630.10(c)(3)). Thereafter, each time a monovalent virus pool from that seed is tested for neurovirulence, FDA proposed to require that the history of neurovirulence test results for pools produced from the same seed virus be reviewed to assure that the rate of failure of the test is not higher than predicted, based on test design and test variability (§ 630.10(c)(5)).

The revised methodology is at least as stringent as the former consistency requirements in detecting neurovirulence problems related to manufacturing defects, while having the added benefit of providing a statistical means for monitoring the continued qualification of a seed virus by evaluating its ability to consistently produce monovalent pools of acceptable neurovirulence. Under § 630.10(c)(5) of the final rule and FDA's method of statistical analysis, nearly 50 lots must be produced from a seed virus before a second failure would be permissible. FDA notes that the failure of a lot to meet neurovirulence requirements is always a cause for concern by FDA and the manufacture, and the possible reasons for any failure are carefully considered and appropriate followup action taken.

FDA continues to believe that these requirements provide assurances of consistency as rigorous as those provided by former requirements, while actually reducing the likelihood that a seed virus will be rejected on the basis of test variability unrelated to genetic stability. Accordingly, FDA continues to include § 630.10(c) (3) and (5) in the rule.

N. Samples and Protocols for Vaccine Release

33. FDA has made a clarifying editorial change to proposed § 630.17(a) (redesignated at § 630.19(a)). Through the addition of the phrase "by the manufacture," the introductory clause on vaccine release parallels the wording of § 610.1, the general provision on lot release of biological products. As under the current regulations, the manufacturer continues to be responsible not only for conducting all required tests on a vaccine, but also for ensuring that no lot of vaccine is released unless it meets all the requirements of the regulations.

34. One comment on proposed § 630.17(a)(4) (redesignated as § 630.19(a)(4)) recommended that FDA require manufacturers to submit protocols for only those monovalent virus pools that have undergone neurovirulence testing. The comment also asked FDA to specify what information should be submitted in a protocol for a partially tested monovalent virus pool.

FDA agrees in part with the comment. The purpose of § 630.19(a)(4) is to ensure that FDA is provided with a complete history, including neurovirulence test results, of all monovalent virus pools manufactured from the same seed virus so that the agency may evaluate the seed virus under the criteria of § 630.10(c)(5). For monovalent virus pools that have not been tested for neurovirulence, FDA agrees that submission of a protocol, containing a summary of manufacture and test results, is unnecessary. Accordingly, FDA is amending § 630.19(a)(4) to require that protocols be submitted only for those monovalent virus pools for which neurovirulence testing has been conducted in whole or in part. However, FDA believes that the agency should also be informed of the reasons that a manufacturer has halted testing of any monovalent virus pool, including those that have not been tested for neurovirulence, so that the agency has a complete history of the problems encountered in vaccine manufacture. FDA is amending § 630.19(a)(4) to require that a manufacturer report to FDA the reasons for halting testing of a monovalent virus pool that was not tested for neurovirulence. The report should be submitted on or before the time of submission of the protocol for the next monovalent virus pool produced in sequence from the same seed virus.

35. One comment on proposed § 630.17(c)(2) (redesignated as § 630.19(c)(3)) suggested that the required virus titer of monovalent virus pools submitted as a bulk sample to FDA be changed from no less than $10^{7.5}$ $TCID_{50}$ per milliliter (mL) to no less than $10^{6.5}$ $TCID_{50}$ per mL consistent with the virus titer specified in proposed § 630.16(b)(1).

FDA disagrees with the comment. FDA's laboratory should have the opportunity to test the monovalent virus pool for neurovirulence anywhere within the titer range of $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per mL specified in § 630.16(b). In addition, the titer of the samples submitted should not be close to the minimum permissible for neurovirulence testing to allow for small differences in the determination of virus titers between the laboratories of the manufacturer and FDA. The titer of monovirulent virus pools are generally approximately $10^{8.5}$ $TCID_{50}$ per mL; therefore, manufacturers should be able to provide samples meeting the titer requirements of § 630.19(c)(3).

FDA has reviewed the requirements for the submission of samples and finds that a few changes are appropriate. FDA has redesignated proposed §§ 630.17(c)(2), 630.17(c)(3), and 630.17(c)(4) as §§ 630.19(c)(3), 630.19(c)(4), and 630.19(c)(5), respectively, in the final rule and has added a new § 630.19(c)(2) to require the submission of a 20-mL sample of preclarified (unfiltered) monovalent virus pool material. Unfiltered virus pool material is necessary for the performance of the test for Mycoplasma § 610.30 (21 CFR 610.30), which is often performed at FDA's laboratory. FDA has also reduced the volume of sample monovalent virus pool and of trivalent vaccine required for submission to FDA under §§ 630.19(c)(3) and 630.19(c)(4) (proposed §§ 630.17(c)(2) and 630.17(c)(3)) and has revised § 630.19(c), editorially.

36. One comment on proposed § 630.17(c)(4) (redesignated as § 630.19(c)(4)) asked that the requirement be removed or amended to assure that any change in sample volumes requested by FDA is reasonable and that the reason for such a request is stated at the time of the request.

The primary intent of § 630.19(c)(4) is to allow for minor changes in sample volumes to be sent to FDA as testing priorities change, without requiring amendment to the regulation. FDA will request an increase in sample volumes only after careful consideration and appropriate notification of manufacturers of oral poliovirus vaccine. The agency does not believe that it is necessary to amend the regulation to state the basic premise that such an administrative action is to be reasonable.

VI. Environmental, Economic, and Information Collection Considerations

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic consequences of this rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Many of the amendments in the final rule will relieve minor burdens or increase the flexibility of the regulations, resulting in minor economic benefits for the manufacturer of oral poliovirus vaccine. FDA believes the final rule will promote the licensure of alternative sources of oral poliovirus vaccine. The availability of alternative sources of vaccine would benefit the public by assuring a continual supply of this necessary vaccine. FDA estimates that the revised test for neurovirulence will reduce the number of primates required for the test by an average of 40 percent.

The agency concludes that the rule is not a major rule as defined by Executive Order 12291. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Section 630.19 of this final rule contains information collection requirements that will be submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980.

VII. Effective Date

The agency believes that the changes in the regulations included in this final rule are a logical outgrowth of the notice and comments already given. Therefore, the agency is not reproposing any of the provisions incorporated in the final rule. However, even if there had been no proposal, the Commissioner finds under 5 U.S.C. 553(b) and 21 CFR 10.40(e)(1) that it would be contrary to the public interest to delay publication of this final rule to provide an opportunity for comment. It is very important that there be no question about the legality of the current supply of vaccine, which is critically important for the protection of the public health. Any interested person may submit comments on the changes within 60 days, and the agency will consider the comments to determine whether the regulations should subsequently be modified or revoked.

Moreover, under 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4), the Commissioner finds good cause for the amended regulations to become effective immediately upon publication because of an important public health interest. As previously discussed, the current vaccine supply in the United States consists of safe and effective vaccine. In order to be certain that it is clear that existing vaccine meets the requirements of the regulations, this final rule is effective immediately.

List of Subjects in 21 CFR Part 630

Biologics, Labeling.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 630 is amended as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

1. The authority citation for 21 CFR part 630 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

2. Subpart B is revised to read as follows:

Subpart B—Poliovirus Vaccine Live Oral Trivalent

Sec.

Subpart B—Poliovirus Vaccine Live Oral Trivalent

§ 630.10 Poliovirus Vaccine Live Oral Trivalent.

(a) *Proper name and definition.* The proper name of this product shall be Poliovirus Vaccine Live Oral Trivalent. The vaccine shall be a preparation containing the three types of live, attenuated polioviruses grown in monkey kidney cell cultures, or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter. The vaccine shall be prepared in a form suitable for oral administration.

(b) *Criteria for acceptable strains.* (1) The Sabin strains of attenuated poliovirus, Type 1 (LS-c, 2ab/KP_2), Type 2 (P712, Ch, 2ab/KP_2), and Type 3 (Leon $12a_1b/KP_3$), or derivatives from them, may be used in the manufacture of vaccine.

(2)(i) Other poliovirus strains may be used in the manufacture of Poliovirus Vaccine Live Oral Trivalent provided that they are identified by historical records including:

(A) Origin,

(B) Techniques of attenuation,

(C) Antigenic properties,

(D) Neurovirulence for monkeys,

(E) Pathogenicity for tissue cultures of various cell types, and

(F) Established virus markers, including rct/40, and d.

(ii) The data shall be submitted to the Director, Center for Biologics Evaluation and Research, along with other data that establish:

(A) That each such strain is at least as safe as the Sabin strain of the corresponding type,

(B) That each such strain demonstrates results comparable to the Sabin srain when inoculated into monkeys by the intrathalamic and intramuscular routes, and

(C) That each such strain has been used to produce vaccines meeting the safety and potency requirements of §§ 630.11, 630.15, 630.16 or 630.17, and 630.18.

(3) The Director, Center for Biologics Evaluation and Research, may prohibit the use of a specified strain whenever the Director finds that it is practicable to use another strain of the same type that will produce a vaccine of greater safety and of at least equivalent potency.

(4) If vaccine lots have been produced directly from strain materials (e.g., Sabin Original, Sabin Original Merck, or Sabin Original Rederived), the strain material is not required to be tested in accordance with the provisions of § 630.10(c).

(c) *Criteria for qualification of the seed virus.* (1) Each seed virus used in vaccine manufacture shall be prepared from an acceptable strain in monkey kidney cell cultures, derived from animals which have met all of the requirements of § 630.12(a), or in a cell culture of a type determined to be suitable by the Director, Center for Biologics Evaluation and Research. The seed virus used in vaccine manufactures shall be demonstrated to be free of extraneous microbial agents except for unavoidable bacteriophage.

(2) Seed virus used for the manufacture of oral poliovirus vaccine shall meet the requirements of §§ 630.13, 630.16 or 630.17, and 630.18. In addition, the neurovirulence of each of the first five consecutive monovalent virus pools prepared from the seed virus shall meet the neurovirulence requirements prescribed in §§ 630.16(b)(2) or 630.17 (b)(3).

(3) A new seed virus may be used for production provided data are submitted in the form of a product license amendment that show the new seed virus and each of the first five consecutive monovalent virus pools prepared from it meet the safety requirements of §§ 630.13 and 630.16 or 630.17 and 630.18 and approval for the use of the seed virus is received in writing from the Director, Center for Biologics Evaluation and Research.

(4) Seed virus in vaccine manufacture shall be prepared in a seed lot system from a master virus seed lot at a passage level consistent with § 630.13(a).

(5) For monovalent virus pools tested in accordance with § 630.16(b), the use of the seed virus may continue provided that the frequency of monovalent virus pools produced with it which fail to meet the criteria of neurovirulence for monkeys prescribed in § 630.16(b)(2) is not greater than predicted on the basis of comparison with the corresponding reference preparation. If the frequency of monovalent virus pools produced with the same seed virus which fail to meet the criteria of neurovirulence for monkeys prescribed in §§ 630.16(b)(2) is greater than the predicted 1 percent on the basis of the 99-percent fiduciary one-sided upper limit, that seed virus shall be disqualified for further use in vaccine production.

(6) For monovalent virus pools tested in accordance with § 630.17, subsequent and identical neurovirulence tests of the seed virus shall be performed in monkeys whenever there is evidence of a significant increase in the neurovirulence of the seed virus, upon introduction of a new production seed lot, and as often as is necessary to otherwise establish, to the satisfaction of the Director, Center for Biologics Evaluation and Research, that the seed virus for vaccine manufacture has maintained its neurovirulence properties as set forth in § 630.17 (b)(3).

§ 630.11 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design conducted in compliance with part 56 of this chapter, unless exempted under § 56.104 or granted a waiver under § 56.105, and with part 50 of this chapter. Such clinical trials shall be conducted with five lots of oral poliovirus vaccine that have been manufactured by the same methods. Type specific neutralizing antibody for each type of poliovirus in the vaccine shall be induced in 90 percent or more of susceptibles after a series of doses.

§ 630.12 Animal source and quarantine; personnel.

(a) *Monkeys*—(1) *Species permissible as source of kidney tissue.* Only Macaca monkeys, Cercopithecus monkeys, or other species found by the Director, Center for Biologics Evaluation and Research, to be equally suitable, which meet the requirements of § 600.11 (f)(2) and (f)(8) of this chapter, shall be used as the source of kidney tissue for the manufacture of Poliovirus Vaccine Live Oral Trivalent.

(2) *Experimental and test monkeys.* Monkeys that have been used previously for experimental or test purposes shall not be used as a source of kidney tissue in the processing of vaccine.

(3) *Quarantine; additional requirements.* Excluding deaths for accidents or causes not due to infectious diseases, if the death rate of any group of monkeys being conditioned in accordance with § 600.11(f)(2) of this chapter exceeds 5 percent per month, the remaining monkeys may be used for the manufacture of Poliovirus Vaccine Live Oral Trivalent only if all of the monkeys survive a new quarantine period.

(b) *Personnel.* All reasonably possible steps shall be taken to ensure that personnel involved in processing the vaccine are immune to all three types of poliovirus and do not excrete poliovirus.

§ 630.13 Manufacture of Poliovirus Vaccine Live Oral Trivalent.

(a) *Virus passages.* Virus in the final vaccine shall represent no more than five tissue culture passages from the original strain or no more than five tissue culture passages from a virus clone derived from one of the first five tissue culture passages of the original strain.

(b) *Virus propagated in primary monkey kidney cell cultures*—(1) *Continuous cell lines.* When primary monkeys kidney cell cultures are used in the manufacture of poliovirus vaccine, continuous cell lines shall not be introduced or propagated in vaccine manufacturing areas.

(2) *Identification of processed kidneys.* The kidneys from each monkey shall be processed separately. The resulting viral fluid shall be identified as a separate monovalent harvest and kept separately from other monovalent harvests until all samples for the tests prescribed in paragraphs (b)(3) and (b)(4) of this section relating to that pair of kidneys have been withdrawn from the harvest.

(3) *Monkey kidney tissue production vessels prior to virus inoculation.* Prior to inoculation with the seed virus and at least 3 days after complete formation of the tissue sheet, the tissue culture growth in vessels derived from each pair of kidneys shall be examined microscopically for evidence of cell degeneration. If such evidence is observed, the tissue cultures from that pair of kidneys shall not be used for poliovirus vaccine manufacture. To test the tissue found free of cell degeneration for further evidence of freedom from demonstrable viable microbial agents, the fluid shall be removed from the cell cultures immediately prior to virus inoculation and tested in each of four culture systems:

(i) Macaca monkey kidney cells,

(ii) Cercopithecus monkey kidney cells,

(iii) Primary rabbit kidney cells, and

(iv) Cells from one of the systems described in § 630.18(a)(6).

The fluid shall be tested in the following manner: Aliquots of fluid from each vessel derived from the same pair of kidneys shall be pooled and at least 10 milliliters of the pool inoculated into each system. The dilution of the pool with medium shall be no greater than 1:4 and the area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The cultures shall be observed for at least 14 days. At the end of the observation period, at least one subculture of fluid from the Cercopithecus monkey kidney cell cultures shall be made in the same tissue culture system and the subculture shall be observed for at least 14 days. If these tests indicate the presence in the monkey kidney tissue culture production vessels of any viable microbial agent, the viral harvest from these tissue cultures so implicated shall not be used for poliovirus vaccine manufacture.

(4) *Control vessels.* At least 25 percent of the cell suspension from each pair of kidneys shall be set aside and used to establish control cultures. The control cultures shall be examined microscopically for cell degeneration for an additional 14 days after the time of viral harvest. The culture fluids from such control cells shall be tested, both at the time of virus harvest and at the end of the additional observation period, by the method prescribed for testing of fluids in paragraph (b)(3) of this section. In addition, the control cell sheet shall be examined for presence of hemadsorbing viruses by the addition of guinea pig red blood cells.

(5) *Interpretation of test results.* At least 80 percent of the control vessels shall be free of cell degeneration at the

end of the observation period to qualify the kidneys for poliovirus vaccine manufacture. If the test results of the control cells indicate the presence of any extraneous agent at the time of virus harvest, the virus harvest from that tissue culture preparation shall not be used for poliovirus vaccine manufacture. If any of the tests or observations described in paragraph (b)(3) or (b)(4) of this section demonstrate the presence in the tissue culture preparation of any microbial agent known to be capable of producing human disease, the virus grown in each tissue culture preparation shall not be used for poliovirus vaccine manufacture.

(6) *Temperature of kidney tissue production vessels after virus inoculation.* After virus inoculation, production vessels shall be maintained at 33.0 to 35.0 °C during the course of virus propagation.

(7) *Kidney tissue virus harvests.* Virus shall be harvested not later than 72 hours after virus inoculation. Virus harvested from vessels containing the kidney tissue from one monkey may be tested separately, or samples of viral harvests from more than one pair of kidneys may be combined, identified, and tested as a monovalent virus pool. Each pool shall be mixed thoroughly and samples withdrawn for testing as prescribed in § 630.18(a). The samples shall be withdrawn immediately after harvesting and prior to further processing, except that samples of test materials frozen immediately after harvesting and maintained at −60 °C or below, may be tested upon thawing, provided no more than one freeze-thaw cycle is employed.

(8) *Filtration.* After harvesting and removal of samples for the safety tests prescribed in § 630.18(a), the pool shall be passed through sterile filters having a sufficiently small porosity to assure bacteriologically sterile filtrates.

§ 630.14 Reference virus preparations.

(a) *Titration test controls.* The following reference viruses may be obtained from the Center for Biologics Evaluation and Research:

(1) Reference Poliovirus, Live, Attenuated, Type 1, as a control for correlation of virus titers in tissue cultures.

(2) Reference Poliovirus, Live, Attenuated, Type 2, as a control for correlation of virus titers in tissue cultures.

(3) Reference Poliovirus, Live, Attenuated, Type 3, as a control for correlation of virus titers in tissue cultures.

(4) Reference Poliovirus, Live, Attenuated, Trivalent, as a control for correlation of virus titers in tissue cultures.

(b) *Neurovirulence test controls.* (1) Except as provided in paragraph (b)(2) of this section, the following reference virus may be obtained from the Center for Biologics Evaluation and Research:

(i) Reference Attenuated Poliovirus, Type 1, as a control for evaluation of monkey neurovirulence tests.

(ii) Reference Attenuated Poliovirus, Type 2, as a control for evaluation of monkey neurovirulence tests.

(iii) Reference Attenuated Poliovirus, Type 3, as a control for evaluation of monkey neurovirulence tests.

(2) Alternatively, upon FDA approval, World Health Organization (WHO) reference standards of the corresponding type, WHO/I, WHO/II, and WHO/III, may be used as controls for evaluation of monkey neurovirulence tests.

§ 630.15 Potency test.

(a) *Test for virus titer.* The concentration of living virus in each monovalent virus pool and in each trivalent vaccine, expressed as infectivity titer per milliliter for cell cultures, shall be determined using the Reference Poliovirus, Live, Attenuated of the same type as a control or using another reference preparation of the same type that has been calibrated against the appropriate reference preparation listed in § 630.14(a). A titration of the monovalent virus pool or the trivalent vaccine shall not constitute a valid test unless the titration of the reference virus when tested in parallel is within ± 0.5 $\log_{10}$ of its established titer. The titration of the parallel reference is intended to validate the test system and shall not be used to adjust the titer of the pool or lot under test.

(b) *Dose.* The human dose of trivalent vaccines shall be constituted to have infectivity titers in the final container material of $10^{6.0}$ to $10^{7.0}$ for type 1, $10^{5.1}$ to $10^{6.1}$ for type 2, and $10^{5.8}$ to $10^{6.8}$ for type 3, when assayed in HEp–2 cells, or the equivalent when titrated by a different method.

§ 630.16 Test for neurovirulence.

(a) Except as provided in § 630.17, the following test relating to safety prescribed in paragraph (b) of this section shall be performed on each monovalent virus pool after the filtration process.

(b) *Neurovirulence in monkeys.* Except as provided in paragraph (b)(5) of this section, each monovalent virus pool shall be tested concurrently with the corresponding type Reference Attenuated Poliovirus for neurovirulence by the intraspinal route of injection in Macaca monkeys. Whenever possible the monkeys should be of comparable age and weight and from the same quarantine group. The monkeys shall be distributed randomly between the two test groups. If the number of monkeys included in both groups precludes completion during a single workday, approximately equal numbers of monkeys shall be inoculated with the monovalent virus pool and the reference preparation during each of the testing days. A preinjection serum sample obtained from each monkey shall be shown to contain no neutralizing antibody in a dilution of 1:4 when tested against no more than 1,000 $TCID_{50}$ (mean tissue culture infectious doses) of each of the three types of poliovirus. The neurovirulence test is not valid unless the inoculation sample is shown to contain the equivalent of $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per milliliter when a representative sample of the monovalent virus pool is titrated in HEp-2 cells in comparison with the Reference Poliovirus, Live, Attenuated of the appropriate type. All monkeys shall be observed for 17 to 21 days and any evidence of physical abnormalities indicative of poliomyelitis or other viral infections shall be recorded.

(1) *Intraspinal inoculation.* For tests with type 1 and type 2 monovalent virus pools and the Reference Attenuated Poliovirus of the corresponding types, each of a group of at least 12 monkeys after being suitably anesthetized shall be injected intraspinally into the enlargement of the lumbar cord with 0.1 milliliter of the inoculation sample. For tests with type 3 poliovirus materials, groups of at least 20 monkeys shall be injected as above after being suitably anesthetized. A test of a virus pool shall include at least one group of monkeys, and no more than three groups shall be inoculated, with the results from testing one, two, or three groups of monkeys being evaluated as prescribed in § 630.16(b)(2). In addition, if on examination there is no evidence of correct inoculation, additional animals may be inoculated in order to reestablish the minimum number of 11 positive monkeys for tests of types 1 and 2 virus pools and the minimum number of 18 positive monkeys for tests of Type 3 virus pools. A positive monkey is an animal which either survives for 11 or more days or succumbs or is sacrificed due to a severe poliovirus infection at any time before the 11th day of the observation period and in which neural lesions specific for poliovirus are seen in the central nervous system. If at least 60 percent of the animals of a group survive 48 hours after inoculation, those

animals that did not survive may be replaced by additional animals. If less than 60 percent of the animals in a group survive 48 hours after inoculation, the test shall be considered invalid and shall be repeated.

(2) *Determination of neurovirulence.* At the conclusion of the observation period, the animals are sacrificed and a comparative evaluation shall be made of the evidence of neurovirulence of the monovalent virus pool under test and the Reference Attenuated Poliovirus of the corresponding type with respect to the histopathology of lesions caused by poliovirus. Animals dying or sacrificed when severely paralyzed or moribund during the test period, should be included in the evaluation, except that these examinations of these monkeys shall be made immediately after death. Histopathological examinations by a qualified pathologist shall be made of at least the lumbar and cervical enlargements, the medulla, the mesencephalon, the thalamus, and motor cortex of each monkey in the groups injected with the monovalent virus pool or with the reference under test. The magnitude of the neuropathology exhibited in the lumbar and cervical areas, the medulla, and mesencephalon of all positive monkeys inoculated with the monovalent virus pool shall be quantified and compared to the magnitude of the neuropathology determined based on the same type of evaluation of monkeys in the current test and all previous tests of the Reference Attenuated Poliovirus of the corresponding type. The monovalent virus pool may be used for poliovirus vaccine if a comparative analysis of the test results demonstrates that the numerical value assigned for neurovirulence of the monovalent virus pool is equal to or less than that of the Reference Attenuated Poliovirus of the corresponding type. If the numerical value assigned for neurovirulence of the monovalent virus pool is greater than that of the Reference Atteneuated Poliovirus, the monovalent virus pool is acceptable if the difference is not greater than that calculated by a mathematical method that is expected to reject vaccines with neurovirulence identical to the reference at a frequency of not less than 1 in 100 when 1 group of monkeys is inoculated. If 2 groups are injected with the same monovalent virus pool under test, the frequency of rejection shall be not less than 5 in 100 and for 3 groups, not less than 10 in 100. If the difference in numerical values is greater than that calculated, irrespective of which reference preparation was used in the test, the monovalent virus pool shall be considered unacceptable and shall not be used for vaccine manufacture.

(3) *Outlier scores.* In the event that one or more monkeys inoculated with virus from the monovalent virus pool have individual mean lesion scores higher than that previously or concurrently associated with the Reference Attenuated Poliovirus of the corresponding type, but the monovalent virus pool meets the criteria for acceptable neurovirulence given in § 630.16(b)(2), the significance of the outlier scores shall be evaluated by a method approved by the Director, Center for Biologics Evaluation and Research before the vaccine may be released for use.

(4) *Test with Reference Attenuated Poliovirus.* Except as provided in paragraph (b)(5) of this section, the Reference Attenuated Poliovirus of the appropriate type shall be tested as prescribed in paragraph (b)(1)(i) of this section concurrently with the monovalent virus pool. More than one monovalent virus pool of the same type may be tested with the same corresponding Reference Attenuated Poliovirus. Initially, a minimum of four tests by the testing laboratory of each Reference Attenuated Poliovirus is required. These tests must be such as to provide sufficient experience to define the performance of the Reference Attenuated Poliovirus and establish the variability of the assay. Each test of the Reference Attenuated Poliovirus shall be considered acceptable and added to the previous testing experience only if the magnitude of its poliovirus neuropathology is statistically compatible with the results of all previous tests with the same reference preparations of the same type performed by the testing laboratory.

(5) *Alternative procedures in case of monkey shortage.* In the event of a shortage of test monkeys and upon approval of the Director, Center for Biologics Evaluation and Research, a monovalent virus pool may be tested without concurrent testing of the corresponding type Reference Attenuated Poliovirus. In such a case, the magnitude of the neuropathology of the monovalent virus pool shall be compared with the magnitude of the neuropathology exhibited in all previous tests of the corresponding Reference Attenuated Poliovirus.

§ 630.17 Alternative test for neurovirulence.

(a) In lieu of the neurovirulence test in § 630.16, the following test may be performed after the filtration process, on each monovalent virus pool or on each multiple thereof (monovalent lot).

(b) *Neurovirulence in monkeys.* Each monovalent virus pool or monovalent lot shall be tested in comparison with the Reference Attenuated Poliovirus, Type 1, for neurovirulence in Macaca monkeys by both the intrathalamic and intraspinal routes of injection. A preinjection serum sample obtained from each monkey must be shown to contain no neutralizing antibody in a dilution of 1:4 when tested against no more than 1,000 $TCID_{50}$ (mean tissue culture infectious dose) of each of the three types of poliovirus. The neurovirulence tests are not valid unless the sample contains at least $10^{7.6}$ $TCID_{50}$ per milliliter when titrated in HEp-2 cells in comparison with the Reference Poliovirus, Live, Attenuated of the appropriate type. All monkeys shall be observed for 17 to 21 days and any evidence of physical abnormalities indicative of poliomyelitis or other viral infections shall be recorded.

(1) *Intrathalamic inoculation.* Each of at least 30 monkeys shall be injected intracerebrally by placing 0.5 milliliter of virus pool material into the thalamic region of each hemisphere. Comparative evaluations shall be made with the virus pool under test and the Reference Attenuated Poliovirus, Type 1. Only monkeys that show evidence of inoculation into the thalamus shall be considered as having been injected satisfactorily. With respect to inoculation, a test is deemed valid if at least 24 monkeys are considered as having been injected satisfactorily. If on examination there is evidence of failure to inoculate virus pool material into the thalamus, additional monkeys may be inoculated in order to reestablish the minimum number of monkeys for the test.

(2) *Intraspinal inoculation.* Each of a group of at least five monkeys shall be injected intraspinally with 0.2 milliliter of virus pool material containing at least $10^{7.6}$ $TCID_{50}$ per milliliter when titrated in HEp-2 cells, and each monkey in additional groups of at least five monkeys shall be injected intraspinally with 0.2 milliliter of a 1:1,000 and 1:10,000 dilution, respectively, of the same virus pool material. Comparative evaluations shall be made with the virus pool under test and the reference material. Only monkeys that show microscopic evidence of inoculation into the gray matter of the lumbar cord shall be considered as having been injected satisfactorily. With respect to inoculation, a test is deemed valid if at least four monkeys per group are considered as having been injected

satisfactorily. If on examination there is evidence of failure to inoculate intraspinally, additional animals may be inoculated in order to reestablish the minimum number of animals per group.

(3) *Determination of neurovirulence.* At the conclusion of the observation period comparative histopathological examinations by a qualified pathologist shall be made of the lumbar cord, cervical cord, lower medulla, upper medulla, mesencephalon and motor cortex of each monkey in the groups injected with virus under test and those injected with the Reference Attenuated Poliovirus, Type 1, except that for animals dying during the test period, these examinations shall be made immediately after death. If at least 60 percent of the animals of a group survive 48 hours after inoculation, those animals which did not survive may be replaced by an equal number of animals tested as prescribed in paragraph (b) of this section. If less than 60 percent of the animals of a group survive 48 hours after inoculation, the test must be repeated. At the conclusion of the observation the animals shall be examined to ascertain whether the distribution and histological nature of the lesions are characteristics of poliovirus infection. A comparative evaluation shall be made of the evidence of neurovirulence of the virus under test and the Reference Attenuated Poliovirus, Type 1, with respect to:

(i) The number of animals showing lesions characteristic of poliovirus infection;

(ii) The number of animals showing lesions other than those characteristic of poliovirus infection;

(iii) The severity of the lesions;

(iv) The degree of dissemination of the lesions; and

(v) The rate of occurrence of paralysis not attributable to the mechanical injury resulting from inoculation trauma. These five factors may be weighted and interpreted as the Director, Center for Biologics Evaluation and Research, or the Director's delegatees deem appropriate. Among permissible interpretations, the factors may be considered in different ways for monkeys inoculated intraspinally and for monkeys inoculated intrathalamically. Other relevant factors in addition to those listed in paragraph (b)(3)(i) through (b)(3)(v) of this section, such as public health consequences, may be considered in evaluating neurovirulence test results. The virus pool under test is satisfactory for poliovirus vaccine only if at least 80 percent of the animals in each group survive the observation period and if a comparative analysis of the test results demonstrates that the neurovirulence of the test virus pool does not exceed that of the Reference Attenuated Poliovirus, Type 1.

(4) *Test with Reference Attenuated Poliovirus.* The Reference Attenuated Poliovirus, Type 1, shall be tested as prescribed in paragraphs (b)(1) and (b)(2) of this section at least once for every 10 production lots of vaccine, except that the interval between the test of the reference and the test of any lot of vaccine shall not be greater than 3 months. The test procedure shall be considered acceptable only if lesions of poliomyelitis are seen in monkeys inoculated with the reference material at a frequency statistically compatible with all previous tests with this preparation.

§ 630.18 Additional tests for safety.

(a) *Tests prior to filtration.* Monovalent virus pools shall contain no demonstrable viable microbial agent, except for unavoidable bacteriophage and the intended attenuated live poliovirus. The vaccine shall be tested for the absence of other infectious agents, including polioviruses of other types or strains. Testing of each monovalent pool shall include the following procedures:

(1) *Inoculation of rabbits.* A minimum of 100 milliliters of each monovalent virus pool shall be tested by inoculation into at least 10 healthy rabbits, each weighing 1,500 to 2,500 grams. Each rabbit shall be injected with a total of 1.0 milliliter intradermally in multiple sites, and subcutaneously with 9.0 milliliters, of the monovalent virus pool and the animals observed for at least 3 weeks. Each rabbit that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and the brain and organs removed and examined. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the rabbits remain healthy and survive the entire period and if all the rabbits used in the test fail to show lesions of any kind at the sites of inoculation and fail to show evidence of cercopithecid herpesvirus 1 or any other viral infection.

(2) *Inoculation of adult mice.* Each of at least 20 adult mice, each weighing 15 to 20 grams, shall be inoculated intraperitoneally with 0.5 milliliter and intracerebrally with 0.03 milliliter of each monovalent virus pool. The mice shall be observed for 21 days. Each mouse that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and examined for evidence of viral infection by direct observation and subinoculation of appropriate tissue into at least five additional mice which shall be observed for 21 days. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the mice remain healthy and survive the entire period and if all the mice used in the test fail to show evidence of lymphocytic choriomeningitis virus or other viral infection.

(3) *Inoculation of suckling mice.* Each of at least 20 suckling mice less than 24 hours old shall be inoculated intracerebrally with 0.01 milliliter and intraperitonally with 0.1 milliliter of the monovalent virus pool. The mice shall be observed daily for at least 14 days. Each mouse that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and examined for evidence of viral infection. Such examination shall include subinoculation of appropriate tissue suspensions into an additional group of at least five suckling mice by the intracerebral and intraperitoneal routes and observed daily for 14 days. In addition, a blind passage shall be made of a single pool of the emulsified tissue (minus skin and viscera) of all mice surviving the original 14 days. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the mice remain healthy and survive the entire period and if all the mice used in the test fail to show evidence of Coxsackie or other viral infection.

(4) *Inoculation of guinea pigs.* Each of at least five guinea pigs, each weighting 350 to 450 grams, shall be inoculated intracerebrally with 0.1 milliliter and intraperitoneally with 5.0 milliliters on the monovalent virus pool to be tested. The animals shall be observed for at least 42 days and rectal temperatures recorded daily for the last 3 weeks of the test. Each animal that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and its tissues shall be examined both microscopically and culturally for evidence of tubercle bacilli, and by passage of tissue suspensions into at least three other guinea pigs by the intracerebral and intraperitoneal routes of inoculation for evidence of viral infection. If clinical signs suggest infection with lymphocytic choriomeningitis virus, serological tests shall be performed on blood samples of the test guinea pigs to confirm the clinical observations. Animals that die or are sacrificed during the first 3 weeks after inoculation with the monovalent virus pools shall be examined for infection with lymphocytic choriomeningitis virus. Animals that die in the final 3 weeks shall be examined both microscopically and culturally for

Mycobacterium tuberculosis. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of all animals remain healthy and survive the observation period and if all the animals used in the test fail to show evidence of infection with *Mycobacterium tuberculosis* or any viral infection.

(5) *Inoculation of monkey kidney tissue cultures.* At least 500 doses or 50 milliliters, whichever is a greater volume of virus, taken either from each undiluted monovalent virus pool or, in equal proportions from individual harvests or subpools, shall be tested for simian viruses in Macaca monkey kidney tissue cultures and, in the same volume, in Cercopithecus monkey kidney tissue cultures. A dilution of the virus pool in medium not to exceed 1:4 shall be used. The area of surface growth of the cells shall be at least 3 square centimeters per milliliter of test inoculum. The test poliovirus shall be neutralized by high-titer specific antiserum of nonprimate origin. The immunizing antigens used for the preparation of antisera shall be grown in a cell line other than the cell line used for testing the vaccine. The cultures shall be observed for at least 14 days. At the end of the observation period at least one subculture of fluid from the Cercopithecus kidney cell culture shall be made in the same tissue culture system and the subculture shall be observed for at least 14 years. The monovalent virus pool may be used for poliovirus vaccine only if all the tissue cultures fail to show evidence of the presence of simian viruses or any other viral infection.

(6) *Inoculation of human cell cultures.* At least 500 doses or 50 milliliters, whichever represents a greater volume of virus, taken from either a single monovalent pool or, in equal proportions from individual harvests or subpools, shall be tested for the presence of measles virus in either:

(i) Primary human amnion cells,

(ii) Primary human kidney cells, or

(iii) Any other human or nonhuman cell system of comparable suspectibility to unmodified measles virus.

The virus pool shall be diluted with medium not to exceed 1:4. The area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The test material shall be neutralized with poliovirus antiserum of other than primate origin if the tissue culture cell system used is susceptible to poliovirus. The immunizing antigens used for the preparation of antiserum shall be grown in a cell line other than the cell line used for testing the vaccine. The culture shall be observed for at least 14 days. The monovalent virus pool may be used for poliovirus vaccine only if all tissue cultures fail to show evidence of the presence of measles virus or any other viral infection.

(7) *Inoculation of a rabbit kidney tissue culture.* At least 500 milliliters of virus pool, taken from either a single monovalent pool or in equal proportions from individual harvests or subpools, shall be tested in primary rabbit kidney tissue culure preparations for evidence of cercopithecid herpesvirus 1. The virus pool shall be diluted with medium not to exceed 1:4. The area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The culture shall be observed for at least 14 days. The monovalent virus pool may be used for poliovirus vaccine only if all tissue cultures fail to show evidence of the presence of herpesvirus.

(b) *Tests for in vitro markers.* In addition to the neurovirulence test required by §§ 630.16 or 630.17, the following tests relating to safety shall be performed on each monovalent virus pools after the filtration process. Tests shall be performed on each monovalent virus pool using the marker tests described below or other methods shown to be of comparable value in indentification of the attenuated strain. The test results shall demonstrate that the monovalent virus pool under test and the seed virus have substantially the same marker characteristics.

(1) *rct/40 Marker.* Attenuated strains which grow readily at 40 °C (±0.5 °C) are classified as rct/40 positive (+) in contrast to the rct/40 negative (−) strains, which show an increased growth of at least 100,000 fold at 36 °C over that obtained at 40 °C. Comparative determinations shall be made in suitable culture vessels.

(2) *d Marker.* Attenuated strains which grow readily at low concentrations of bicarbonate under agar are classified as d positive (+) in contrast to the d negative (−) strains, which exhibit delayed growth under the same conditions. The cultures shall be grown in a 36 °C incubator, in suitable culture vessels in an environment of 5 percent CO_2 in air.

(c) *Final container sterility test.* The final container sterility test need not be performed provided aseptic techniques are used in the filling process.

§ 630.19 General requirements.

(a) *Vaccine release.* No lot of trivalent vaccine shall be released by the manufacturer unless each monovalent virus pool contained therein:

(1) Has been manufactured by the same procedures;

(2) Has met the criteria of neurovirulence for monkeys prescribed in §§ 630.16(b) or 630.17(b);

(3) Has met the criteria of in vitro markers prescribed in § 630.18(b); and

(4) Has been released for further manufacturing by the Director, Center for Biologics Evaluation and Research unless, at the Director's discretion, the Director determines that lot release by the Center for Biologics Evaluation and Research is not required. The protocols for all monovalent virus pools produced sequentially from the same seed and tested, in whole or in part, in accordance with §§ 630.16(b) or 630.17(b) shall be submitted to the Director, Center for Biologics Evaluation and Research, whether or not release of the pool for further manufacturing is requested. For monovalent virus pools not tested under §§ 630.16(b) or 630.17(b), the manufacturer shall report the reasons for partial manufacture to the Director, Center for Biologics Evaluation and Research.

(b) *Labeling.* In addition to the items required by other applicable labeling provisions of this chapter, the final container label shall bear a statement indicating that liquid vaccine may not be used for more than 7 days after opening the container. Labeling may include a statement indicating that, for frozen vaccine, a maximum of 10 freeze-thaw cycles is permissible provided the total cumulative duration of thaw does not exceed 24 hours, and provided the temperature does not exceed 8 °C during the periods of thaw.

(c) *Samples and protocols.* For each trivalent lot of vaccine and for each monovalent virus pool, the following materials shall be submitted in accordance with instructions received from the Director, Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892.

(1) A protocol that consists of a summary of the history of manufacture of each trivalent lot or monovalent virus pool, including any test results requested by the Director, Center for Biologics Evaluation and Research.

(2) Twenty milliliters of monovalent virus pool before filtration.

(3) Forty milliliters of monovalent virus pool after filtration. The titer of the sample shall be no less than the equivalent of $10^{7.5}$ $TCID_{50}$ per milliliter when titrated in HEp–2 cells; if the titer is greater than $10^{7.5}$ $TCID_{50}$ per milliliter, a correspondingly smaller volume may be submitted.

(4) A total of at least 50 single doses or the equivalent thereof of the trivalent vaccine.

(5) When deemed appropriate, the Director, Center for Biologics Evaluation and Research, may require submission of samples or sample volumes other than those specified in paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(d) *Public health implications.* In interpreting any provision of the regulations governing oral poliovirus vaccine, the agency may consider any potential effect on individual or public health, including effects related to vaccine supply.

(e) *Alternative procedures.* (1) The Director, Center for Biologics Evaluation and Research, may approve an exception or alternative to any requirement in subpart B of part 630 regarding Poliovirus Vaccine Live Oral. Requests for such exceptions or alternatives should ordinarily be made in writing. However, in limited circumstances such requests may be made orally and permission may be given orally by the Director, Center for Biologics Evaluation and Research. Oral requests and approvals must be followed by written requests and written approvals.

(2) FDA will publish a list of approved alternative procedures and exceptions periodically in the **Federal Register.**

(f) *Status of vaccine in distribution.* Poliovirus Vaccine Live Oral released or in distribution prior to May 8, 1991, is deemed to meet the requirements of supart B of part 630.

Dated: May 1, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

S.J. Res. 98/Pub. L. 102-38

To express appreciation for the benefit brought to the Nation by Amtrak during its twenty years of existence. (May 3, 1991; 105 Stat. 184; 2 pages) Price: $1.00

S.J. Res. 102/Pub. L. 102-39

Designating the second week in May 1991 as "National Tourism Week". (May 3, 1991; 105 Stat. 186; 1 page) Price: $1.00